IN THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

OASIS SHAREHOLDER RECOVERY, LLC *f/k/a* Oasis Legal Finance Group, LLC, and GARY D. CHODES,	)	
	)	Hon. Mitchell L. Hoffman
Plaintiffs,	)	
vs.	)	
	)	
RALPH SHAYNE; RAYMOND JAMES & ASSOCIATES, INC.; D.E. SHAW & CO., L.P.; D.E. SHAW & CO., L.L.C.; D.E. SHAW COMPOSITE SIDE POCKET SERIES 5, L.L.C.; STELLUS CAPITAL MANAGEMENT, LLC; STELLUS CAPITAL INVESTMENT CORPORATION; SPV CAPITAL FUNDING, LLC; ADAM B. POLLOCK; DEAN A. D'ANGELO; ROBERT T. LADD; MICHAEL H. JONES; OASIS LEGAL FINANCE HOLDING COMPANY, LLC; OASIS LEGAL FINANCE OPERATING COMPANY, LLC; RICHARD SMOLEN, OASIS PARENT, L.P.; OASIS PARENT GP, LLC; OASIS MERGER SUB, LLC; OASIS INTERMEDIATE HOLDCO, LLC; D.E. SHAW LAMINAR PORTFOLIOS, L.L.C.; PARTHENON CAPITAL PARTNERS FUND II, L.P., PARTHENON INVESTORS IV, L.P.; PCP MANAGERS, L.P.; PCP MANAGERS GP, LLC; and DAVID E. SHAW,	)	Consolidated Cases: No. 2018 L 152 No. 2018 CH 969 Jury Demands Filed
	)	
Defendants, and	)	
	)	
MILLENNIUM TRUST and MTC PARENT L.P., Respondents in Discovery.	)	

CONSOLIDATED AMENDED COMPLAINT AMENDED PURSUANT TO THE COURT'S ORDERS DATED AUGUST 15 and 20, 2019

Oasis Shareholder Recovery, LLC *f/k/a* Oasis Legal Finance Group, LLC ("Group") and Gary D. Chodes ("Chodes" and, collectively with Group, the "Plaintiffs"), by their undersigned counsel, bring this action against the above-captioned defendants. Plaintiffs have filed one consolidated complaint with all claims as to all defendants. Plaintiffs also name Millennium Trust and MTC Parent, L.P. as respondents in discovery (735 ILCS 5/2-402).

1. Plaintiff Chodes is a citizen and resident of Highland Park in Lake County, Illinois.

2. Plaintiff Group is a limited liability company organized under the laws of Delaware with its principal place of business located in Highland Park, Lake County, Illinois. Group was founded under the name Legal Recovery Finance, LLC, which was changed in 2003 to Oasis Legal Finance Group LLC, and changed again in 2016 to Oasis Shareholder Recovery, LLC. To avoid confusion, this complaint refers to this plaintiff entity using the shorthand name that was long used by many of the parties themselves: 'Group.'

SUMMARY OF CLAIMS

3. Plaintiffs Chodes and Group were the founders of what is today the nation's largest consumer legal funding business, which operates under the trade name "Oasis Financial."

4. That business was sold by majority owners on September 9, 2016 – without notice or any payment to Plaintiffs, who were each minority owners. The defendants negotiated the sale and implemented a series of agreements referred to collectively as the "Transaction."

5. The steps and structure of the Transaction breached the governing LLC agreement, specifically violating provisions that render the Transaction void. In particular, the defendants withheld from Plaintiffs multiple forms of mandatory notice. Plaintiffs were denied rights, protections, and equal treatment among like classes of equity owners assured to minority owners under (i) Delaware law and (ii) the governing LLC agreement.

6. A secret side deal occurred, that was contrary to the LLC agreement and the Transaction documents themselves. It was kept hidden until a year after the sale. The side deal apparently was to pay certain equity owners in the Transaction without allowing the Plaintiffs to: (a) find out or (b) be paid as well.

7. Virtually all of the contractual breaches were in furtherance of an overarching aim to

conceal the sale process and Transaction from the Plaintiffs. For example, the defendants entirely denied Plaintiffs their respective contractual rights to sit on or participate in the HoldCo board of managers.

8. The defendants excluded Plaintiffs in order to prevent discovery of rampant self-dealing. The bidding process was rigged in favor of a potential buyer called Parthenon. Parthenon had conflicts of interest with and paid kickbacks to Oasis Financial officers and board members. Oasis Financial accounting methods (that had been used for a decade and endorsed by multiple auditing firms) were jettisoned solely to create a pretext for Parthenon to pay a below-market purchase price. As a result, the successful and growing Oasis Financial business was sold for less than half its value.

9. In contrast to Plaintiffs, other minority owners (and even certain outsiders) were given: (a) transparency as to board proceedings and the sale process; and (b) an opportunity to partake in side deals and the Transaction.

10. Fraud by omission (despite several defendants' fiduciary duty to speak) occurred during the: sale process; negotiations with Parthenon; agreement in principle in May 2016, after which Parthenon assumed managerial duties over the Oasis Financial business; and actions taken by the Oasis officers, board of managers, and members to effectuate the sale. Mandatory board disclosures to Plaintiffs prior to the Transaction were withheld – despite the fact that such information was provided to other minority owners. Affirmative fraudulent misrepresentations were then made to obfuscate and conceal improper aspects of the Transaction.

11. The aiding and abetting defendants were sophisticated institutions and businesspersons who knew full well that minority owners Chodes and Group were being marginalized, lied to, and denied contractual rights. In particular, all defendants knew that Ralph

Shayne was: (a) a manager and officer of Group; (b) concealing information from Group; and (c) subverting Group's interests. Yet the defendants encouraged, assisted, and financially rewarded Shayne in his breaches of fiduciary duty.

VENUE

12. Venue is proper in this Court under 735 ILCS 5/2-101 subsections (1) and (2), 735 ILCS 5/2-104(b), and/or 735 ILCS 5/2-102(a).

13. Defendants Raymond James, HoldCo and OpCo, do business in Lake County and are deemed residents thereof. Also, on information and belief, the D.E. Shaw-affiliated defendants have customers, clients, and investors located in Lake County.

14. The causes of action arose in part from actions, transactions, communications, and contracts that took place (at least in part) in Lake County.

DEFENDANTS AND PERSONAL JURISDICTION

15. This Court has jurisdiction over this case pursuant to, *inter alia*: 735 ILCS 5/2-209(a) subsections (1), (2), (3), (4), (7), (10), (11), (12) and (14); 735 ILCS 5/2-209(b) subsections (1), (2), and (4); and/or 735 ILCS 5/2-209(c).

16. Each defendant is subject to the personal jurisdiction of Illinois courts because these causes of action arise out of acts described in 735 ILCS 5/2-209. Each defendant:

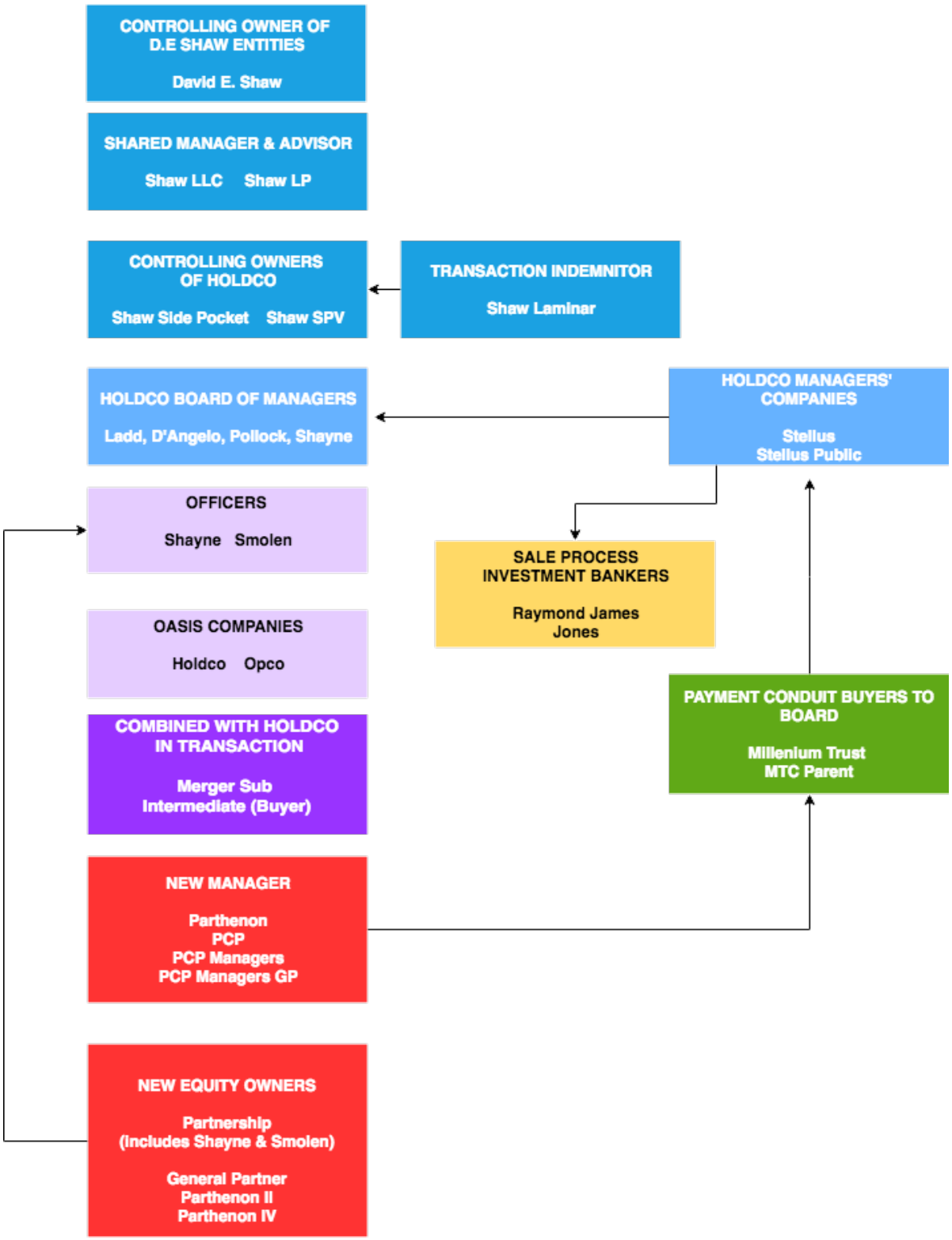
a. has done and is doing business in or connected to Illinois;

b. made and/or performed contracts substantially connected with Illinois;

c. regularly or systematically has and had contacts with the State of Illinois; and

d. purposefully availed himself or itself of the privilege of conducting business or benefitting from actions and activities in Illinois,

17. This figure shows all defendants, who are then described *infra*.



18. The Oasis Companies: Oasis Legal Finance Holding Company, LLC ("HoldCo") is a Delaware limited liability company with its principal place of business located in Illinois.

19. Oasis Legal Finance Operating Company, LLC ("OpCo") is a Delaware limited liability company its principal place of business located in Illinois.

20. Officers: Defendants Ralph Shayne ("Shayne") and Richard Smolen ("Smolen") were officers of both HoldCo and OpCo during the time of the events at issue.

21. Shayne is a citizen of and is domiciled in Cook County, Illinois. Shayne was the chief executive officer (CEO) of HoldCo and OpCo.

22. Smolen is a citizen and resident of the State of Illinois who, on information and belief, lives in or around Cook County.

a. Smolen was the chief financial officer (CFO) of HoldCo and OpCo.

b. Smolen also was the Vice President of an entity called Oasis Merger Sub, LLC, which was used to effectuate the Transaction as described in this complaint.

23. D.E. Shaw Equity Owners of HoldCo: D. E. Shaw Composite Side Pocket Series 5, L.L.C. ("Shaw Side Pocket") is a Delaware limited liability company with its principal place of business in Texas and/or in New York. Shaw Side Pocket was assignee of and/or successor in interest to, *inter alia*, D.E. Shaw Laminar Lending, Inc.; D.E. Shaw Laminar Portfolios, L.L.C.; Laminar Direct Capital, L.P. Shaw Side Pocket owned the majority of the equity in HoldCo during the time of the events at issue. (*See* Ex. 1 at Exhibit A p. A-4.)

24. SPV Capital Funding, L.L.C. ("Shaw SPV") is a Delaware limited liability company with its principal place of business in New York, New York. (*See* Ex. 1 at Exhibit A p. A-6.)

25. Shaw SPV has only one member/owner, which is D.E. Shaw Laminar Portfolios, L.L.C. ("Shaw Laminar"), also a Delaware limited liability company. Shaw Laminar and Shaw SPV were parties to an Indemnification Agreement that was part of the Transaction.

26. Hedge Fund That Ultimately Owned, Controlled and Managed HoldCo: HoldCo's majority owner Shaw Side Pocket itself had a manager and an investment advisor that together directed the actions and decisions of the Shaw Side Pocket fund. Both are affiliates of D.E. Shaw.

27. D. E. Shaw & Co., L.P. ("Shaw LP") is a Delaware limited partnership with its principal place of business in New York. Shaw LP was the investment advisor of Shaw Side Pocket (which owned assets in Illinois including HoldCo) and Shaw Laminar (which owned Shaw SPV) during the time of the events at issue. Shaw LP advised Shaw Side Pocket and Shaw Laminar regarding HoldCo, the Transaction, and the related side deal. Shaw LP received fees for its services to Shaw Side Pocket and Shaw Laminar.

28. D. E. Shaw & Co., L.L.C. ("Shaw LLC") is a Delaware limited liability company with its principal place of business in New York. Shaw LLC was the manager of Shaw Side Pocket (which owned the equity in HoldCo, an Illinois business). As manager of Shaw Side Pocket, Shaw LLC had ultimate authority to make decisions regarding the sale process for HoldCo, the Transaction, and the related side deal.

29. David E. Shaw ("David Shaw") is a citizen and resident of Westchester County, New York. Mr. Shaw ultimately owns, controls, and profits from all of the D.E. Shaw-related entities named herein. On February 17, 2015, Shaw Side Pocket caused to be filed with the United States Securities and Exchange Commission the following description of its affairs:

> By virtue of David E. Shaw's position as President and sole shareholder of D. E. Shaw & Co., Inc., which is the general partner of D. E. Shaw & Co., L.P., which in turn is the investment adviser of D. E. Shaw Composite Side Pocket Series 5, L.L.C. …, and by virtue of David E. Shaw's position as President and sole

> shareholder of D. E. Shaw & Co. II, Inc., which is the managing member of D. E. Shaw & Co., L.L.C., which in turn is the manager of D. E. Shaw Composite Side Pocket Series 5, L.L.C. … David E. Shaw may be deemed to have the shared power to vote or direct the vote of, and the shared power to dispose or direct the disposition of [shares held by Shaw Side Pocket].

Schedule 13G Amendment No. 3, Meru Networks Inc. filed by D.E. Shaw Composite Side Pocket Series 5, L.L.C., CUSIP No. 59047Q103 (Feb. 17, 2015). In Form ADV filed with the SEC by D.E. Shaw & Co., L.P., CRD No. 108679 (Nov. 9, 2018), David Shaw is listed as a limited partner, control person, and "principal owner" of Shaw LP. According to published sources, David Shaw earned from his hedge fund entities around $400 million in 2016, $415 million in 2017, and around $600 million in 2018.

30. David Shaw inserted or caused to be inserted many protections for himself personally in HoldCo's LLC Agreement. (*E.g.*, Ex. 1 §§ 1.1 pp. 6 & 16; *id.* §§ 11.1, 11.2, 11.3(a), 11.4(b), 12.19, 12.20.)

31. Shaw LP and Shaw LLC regularly do business in Illinois. For example, Shaw L.P. is registered as a trader on the Chicago Mercantile Exchange. In a form "Uniform Application for Investment Adviser Registration and Report" filed with the SEC, Shaw LP listed Shaw LLC as its "Related Person." In response to the question "Are you and the related person under common control?", Shaw LP responded "Yes." Form ADV, D.E. Shaw & Co., L.P., CRD No. 108679 (Nov. 9, 2018). On information and belief, D.E. Shaw's contracts with the Chicago Mercantile Exchange and/or Chicago Board of Options Exchange would confirm the relationships of Shaw LP and/or Shaw LLC to these Illinois-based commercial exchanges. Any D.E. Shaw investment in businesses located in Illinois or ownership interest in an entity doing business in Illinois ultimately is controlled by and inures to the benefit of David Shaw.

32. Shaw LP and Shaw LLC advised, directed, managed, and controlled Shaw Side Pocket's assets (including its equity in HoldCo) and decisions made with respect thereto. Shaw Side Pocket, Shaw LP, and Shaw LLC acted through agents including, *inter alia*, defendants Stellus, Shayne, Ladd, D'Angelo, and Pollock.

33. D.E. Shaw Outsourced HoldCo Management Duties to Stellus: A Management Agreement among Shaw Side Pocket, HoldCo, and OpCo provided for the payment of annual management fees plus expenses. Originally, those amounts were paid to D.E. Shaw.

34. On or around January 25, 2012, D.E. Shaw announced that it had spun-off some of its employees and business into a new firm called Stellus Capital Management, LLC, ("Stellus"). Stellus is a Delaware limited liability company with its principal place of business in Houston, Texas. According to its own website:

> Stellus Capital Management, LLC ("Stellus") is a middle market investment firm with approximately $1.5 billion of assets under management (as of April 30, 2017) across its two investment platforms — private credit and energy private equity. The private credit platform focuses on originating direct loans to middle market companies. … Additionally, the private credit platform manages the investments of Stellus Capital Investment Corporation (NYSE: SCM), a publicly-traded business development corporation.

35. A sub-advisory agreement existed among Stellus, Shaw Side Pocket, Shaw LLC, and/or Shaw LP by which Stellus co-managed certain assets owned by the Shaw Side Pocket fund – including the equity in HoldCo.

> The Stellus Capital Management investment professionals continue to provide investment sub-advisory services to the D. E. Shaw & Co., L.P. and its associated investment funds (the "D.E. Shaw group") with respect to an approximately $134 million investment portfolio (as of December 31, 2017) in middle-market companies pursuant to sub-advisory arrangements.

Form 10-K, Stellus Capital Investment Corporation, Commission File No. 1-35730 (Dec. 31, 2017) at 3. On information and belief, between 2012 and 2016, Stellus split (with one or more D.E. Shaw entities) the management fees generated from HoldCo and Opco.

36. Board of Managers of HoldCo: Shaw Side Pocket elected as its designees to the board of managers of HoldCo the following three persons (originally from D.E. Shaw who moved to found Stellus):

a. Robert Ladd ("Ladd") is, upon information and belief, a resident of the State of Texas.

b. Dean D'Angelo ("D'Angelo") is, upon information and belief, a resident of the State of Maryland.

c. Adam Pollock ("Pollock") is, upon information and belief, a resident of the State of Texas. Pollock not only served on the board of managers of HoldCo but also acted as a *de facto* officer.

37. In addition to Ladd, D'Angelo, and Pollock, Shayne also served on the board of managers of HoldCo at the time of the events at issue.

38. The "Go Between" for the Relationship Between Stellus and Parthenon: Stellus Capital Investment Corporation ("Stellus Public") is a Maryland corporation with its headquarters in Houston, Texas. Stellus Public describes its relationship with Stellus as follows:

> Our investment activities are managed by our investment adviser, Stellus Capital Management, an investment advisory firm led by Robert T. Ladd and its other senior investment professionals. We source investments primarily through the extensive network of relationships that the senior investment professionals of Stellus Capital Management have developed with financial sponsor firms, financial institutions, middle-market companies, management teams and other professional intermediaries.

Form 10-K, Stellus Capital Investment Corporation, Commission File No. 1-35730 (Dec. 31, 2017) at 1. Stellus, Ladd, Pollock, and D'Angelo managed the affairs of and acted on behalf of Stellus Public.

> In addition to serving as our investment adviser and the sub-advisor to the D. E. Shaw group as noted above, Stellus Capital Management currently manages a private credit fund that has an investment strategy that is identical to our investment strategy and energy private equity funds. … We do not have any direct employees, and our day-to-day investment operations are managed by Stellus Capital Management. … Our officers are employees of Stellus Capital Management and our allocable portion of the cost of our chief financial officer and chief compliance officer and his staff is paid by us pursuant to the administration agreement that we have entered into with Stellus Capital Management.

Id. at 3, 13. Stellus Capital pays fees to Stellus, including fees associated with Stellus Public's capital gains. *Id.* at 13—19.

39. Stellus Public regularly does business in Illinois. For example, Stellus Public has made loans to and contracts with Millennium Trust (and its parent MTC Parent L.P.), Tellular Corp., and Hostway Corporation, all of which are located in Illinois.

40. Stellus Public is a defendant in this case because Stellus, Ladd, Pollock, and D'Angelo knowingly and intentionally acted to benefit Stellus Public at the expense and to the derogation of HoldCo's minority owners. Stellus Public itself was aware and complicit. For example, Stellus Public received the 'kickbacks' as described in the body of this pleading: Equity was granted to Stellus Public around the time of the HoldCo sale (i.e., equity in an Illinois business owned and controlled by Parthenon called Millennium Trust and its parent MTC Parent, L.P.) and subsequent unusual payments of millions of dollars have been made to Stellus Public by the Parthenon-controlled Millennium entities.

41. Investment Bankers for the HoldCo Sale Process: Raymond James & Associates, Inc. ("Raymond James") is a Florida corporation. Raymond James is registered with the Secretary of State of Illinois to do business in Illinois and works from offices across this state.

42. Raymond James and D.E. Shaw (through one or more of its entities) own stakes in Stellus Public.

43. Michael H. Jones ("Jones") is a citizen and resident of the State of Illinois. Jones was employed by Raymond James as a Managing Director – until, just after the sale of HoldCo, Jones quit his position at Raymond James.

44. Buyers of HoldCo: Parthenon Capital Partners is the trade name of a private equity firm with many affiliated entities and employees all under common management and control: PCP Managers GP, LLC ("PCP GP") is a Delaware limited

liability company. PCP Managers, L.P. ("PCP") is a Delaware limited partnership organized. Parthenon Capital Partners Fund II, L.P. ("Parthenon II") is a limited partnership organized under the laws of Delaware. Parthenon Investors IV, L.P. ("Parthenon IV") is a limited partnership organized under the laws of Delaware. All entities identified in this paragraph are referred to collectively as "Parthenon."

45. Oasis Intermediate HoldCo, LLC ("Intermediate") is a Delaware limited liability company. Intermediate was defined as the "Buyer" in the Transaction. Intermediate is wholly owned by the Partnership.

46. Oasis Parent, L.P. (the "Partnership") is a limited partnership with Oasis Parent GP, LLC ("General Partner") as its general partner. Both entities are organized under the laws of

Delaware. The following are limited partners in the Partnership:

i. Parthenon II

ii. Parthenon IV

iii. Smolen

iv. Shayne

v. The Ralph Shayne 2006 Irrevocable Stock Trust (the trustee of which is Shayne's wife)

vi. Colin Lawler (an officer of HoldCo and OpCo who works in operations and was originally hired by Gary Chodes)

vii. The Debbie Weinstein McKean Revocable Trust (the trustee of which was the former Chief Marketing Officer of HoldCo and OpCo), and

viii. Jack Lavin (current CEO of HoldCo and OpCo)

47. All allegations with regard to personal jurisdiction are pled in the cumulative and/or in the alternative. Plaintiffs reserve the right – as needed – to put forward additional allegations, to conduct discovery, and/or to submit evidence demonstrating the amenability of each defendant to the personal jurisdiction of this Court.

GENERAL ALLEGATIONS

I. BACKGROUND

Founding of Group

48. In 2002, Gary Chodes founded Group as a startup business in Highland Park, Illinois. Chodes came up with an innovative nationwide industry model for legal funding under the "Oasis" brand, which began to flourish. Group offered litigation finance for commercial and

consumer plaintiffs across the country, so that they might afford to prosecute their cases while covering other financial needs.

49. Chodes was and is the CEO and one of the managers of Group.

50. Ralph Shayne was hired by Chodes as an intern after Shayne finished business school. Around 2003, Shayne became Group's Vice President of Finance. Shayne was given the title of CFO of Group the following year. In or around 2005, Shayne became one of Group's managers.

51. Managers for an LLC are like directors for a corporation. *See generally Auriga Capital Corp. v. Gatz Props., LLC*, 40 A.3d 839, 851-52, n.39 (Del. Ch. 2012) (explaining that the manager of an LLC "is vested with discretionary power to manage the business of the LLC and noting that "[i]n this regard, managers of an LLC bear resemblance to directors of a corporation, who are charged with 'the business and affairs' of the corporation").

Founding of OpCo

52. With quick growth of the consumer legal funding business came a need for working capital to meet increasing demand. Group attracted the attention of a large hedge fund in New York called D.E. Shaw.

53. In July 2004, Group created OpCo as an operating subsidiary. In August 2004, a D.E. Shaw special purpose entity (i) provided capital and (ii) received a minority equity stake in OpCo. Group held the majority of the equity in OpCo.

54. By February 2007, D.E. Shaw (through a special purpose entity under its control) acquired a controlling majority share (over 50%) of the equity in OpCo. Group thereby became the minority owner of OpCo.

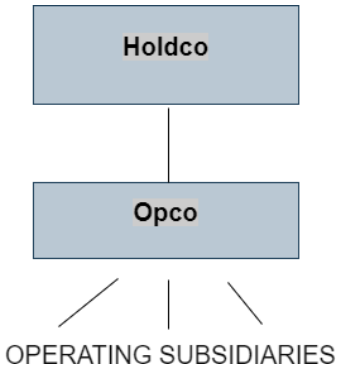
Founding of HoldCo

55. By 2010, D.E. Shaw decided to acquire an even greater share of the business. To that end, on October 27, 2010, HoldCo was created.

56. OpCo (which previously had been co-owned by a D.E. Shaw entity and by Group) became a wholly owned subsidiary of HoldCo. This complaint occasionally refers to HoldCo and OpCo (including OpCo's own wholly-owned operating subsidiaries) collectively as the "Oasis Companies."

57. On June 30, 2011, the parties adopted the Second Amended and Restated Limited Liability Company Agreement of Oasis Legal Finance Holding Company LLC (the "HoldCo LLC Agreement"), which is attached to this complaint as Exhibit 1.

58. The following figure shows the structure of the Oasis Companies:



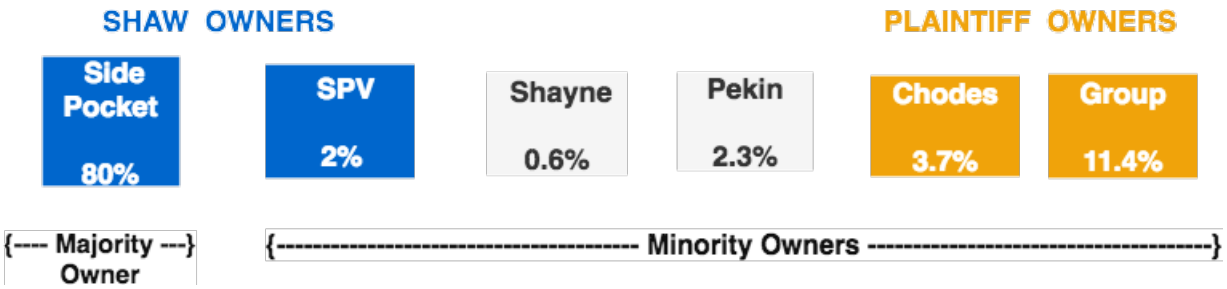
59. Equity in HoldCo was referred to in the HoldCo LLC Agreement as "Common Units."

Ownership and Management of HoldCo

60. The chart below lists the owners and the amount of Common Units they owned.

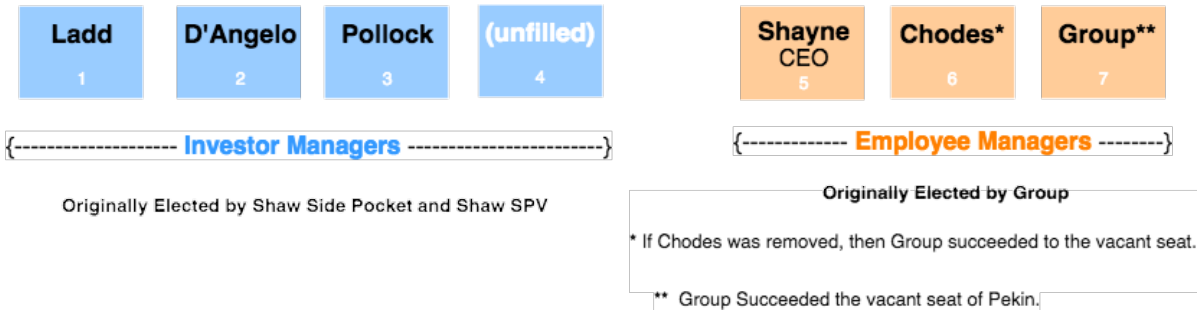
Owner	*Common Units*	*Percentage*
Shaw Side Pocket	33,284,000	80.0
Shaw SPV	832,080	2.0
Group	4,742,349	11.4
Gary Chodes	1,533,385	3.7
Michael Pekin	974,356	2.3
Ralph Shayne	262,200	0.6
TOTAL	41,628,370	100%

61. The following figure provides another way to visualize the equity owners of HoldCo prior to the Transaction:



62. Ladd, D'Angelo, and Pollock (who run Stellus and Stellus Public) were elected by majority owners Shaw Side Pocket and Shaw SPV in 2011 to sit on the HoldCo board of managers. Group elected Chodes, Shayne, and Michael Pekin ("Pekin") in 2011 to sit in the minority owners' Employee Manager seats on the HoldCo board.

63. The following figure shows the composition of the seven (7) managers positions on the HoldCo board (prior to the Transaction):



64. Stellus became more and more hands-on with the day-to-day management of HoldCo and OpCo. Pollock took the most direct and active role – operating like a *de facto* officer. Stellus removed Chodes from his duties as CEO of the Oasis Companies in the Spring of 2013.

D.E. Shaw and Stellus Hired Ralph Shayne as CEO of the Oasis Companies

65. In mid-2013, Ralph Shayne was named the CEO of the Oasis Companies.

66. Shaw Side Pocket, Shaw SPV, Shaw LP, Shaw LLC, Stellus, Ladd, D'Angelo, and Pollock all knew that Shayne was and continued to be an officer and a manager of Group.

67. On information and belief, Shaw Side Pocket, Shaw SPV, Shaw LP, Shaw LLC, Stellus, Ladd, D'Angelo, and Pollock agreed with Shayne and/or instructed Shayne that he was not to resign his positions as an officer and a manager of Group.

68. Shayne was informed when he was hired as CEO that his superiors from D.E. Shaw and Stellus planned to sell the Oasis Companies within the next two years. In 2013 and 2014, the Oasis Companies revised several of their agreements with lenders and obtained a substantial amount of additional borrowing capacity under their credit facilities.

II. THE SALE PROCESS

Shayne and the HoldCo Board Hired Raymond James to Conduct a Sale Process

69. In late 2014 or early 2015, the controlling owners, managers, and officers of HoldCo began reaching out to potential investment bankers. On March 11, 2015, Raymond James and HoldCo signed a confidentiality agreement. HoldCo and its subsidiaries agreed to provide their business, operations, and financial information to Raymond James, which then conducted initial diligence and valuation.

70. On May 21, 2015, HoldCo formally hired Raymond James as investment banker to market HoldCo for sale. The agreement provided that Raymond James would be entitled to receive a fee upon consummation of a transaction for HoldCo. Three price ranges were referenced: less than $147 million, $147 to $181 million, and greater than $181 million.

71. It is reasonable, if not necessary, to infer that the investment bankers, majority owners, board of managers, and officers of HoldCo viewed $147 million as the 'low end' for a potential purchase price. (HoldCo was later sold for a purchase price of only $71 million or around $67 net of cash.)

72. The marketing for sale of the Oasis Companies was done under the code name "Project Kodiak."

Jones and Raymond James Provided Detailed Information to Potential Bidders

73. In mid-September 2015, Raymond James circulated a teaser for Project Kodiak (attached as Exhibit 2).

74. Many companies expressed initial interest in learning more and signed a non-disclosure agreement ("NDA"). Signing an NDA entitled a potential bidder to receive the Project

Kodiak Confidential Information Memorandum, which was written by Raymond James in consultation with Shayne, Smolen, HoldCo, its board, and OpCo (the "Kodiak CIM").

75. On September 24, 2015, Parthenon-affiliated entity PCP executed an NDA, which Smolen counter-executed on September 29, 2015 on behalf of HoldCo. Parthenon received the Kodiak CIM in early October 2015.

76. The Kodiak CIM was a 64-page document containing detailed information regarding, *inter alia*, the Oasis Companies' history, business methods, marketing, operations, management and employees. Importantly, the Kodiak CIM contained charts, figures, and explanations regarding the Oasis Companies' asset performance, financial statements, and accounting methods.

77. Raymond James received no fewer than 11 bids

78. Parthenon's bid was selected as the 'winner' of the bidding process. Somehow, Parthenon's eventual accepted offer was for $72.5 million, i.e., substantially lower than its initial bid.

79. The reasons for the reduced bid and low accepted price are discussed in Part VI.E of these General Allegations.

By the Spring of 2016, the Sellers Reached an Agreement in Principle with Parthenon

80. On April 25, 2016, Shayne and Smolen contacted the Oasis Companies' lender FirstMerit Bank asking to introduce them to Parthenon.

81. On May 4, 2016, Shayne, Smolen and representatives of Parthenon conducted a call with FirstMerit Bank and made a power point presentation. On information and belief, no one from Stellus or D.E. Shaw participated in that call.

82. That same evening, Smolen emailed to FirstMerit Bank an electronic copy of a Lender Renewal Discussion Package slide deck presentation that Shayne, Smolen, and Parthenon had prepared together and used during the call earlier that day.

83. Parthenon Capital Partners was listed as the "Sponsor" in the Lender Renewal Discussion Package. The document informed the bank that "Parthenon has largely completed its diligence process and is excited to acquire the Company and partner with management."

84. The next day, on May 5, 2016, Smolen sent a Supplemental Financial Package to the bank. Both the Lender Renewal Discussion Package and the Supplemental Financial Package contemplated $72.5 million of "Proceeds to Sellers" to be paid in connection with Parthenon's acquisition of HoldCo.

85. FirstMerit Bank then began working with Shayne, Smolen, and Parthenon to prepare a confidential information memorandum inviting banks and other lenders to join in a revised credit facility for the Oasis Companies once acquired by Parthenon. This memorandum was completed by July 12, 2016 (the "2016 Lender CIM").

86. The 2016 Lender CIM – which had been reviewed and approved by Shayne, Smolen, the Oasis Companies, and Parthenon – informed potential lenders that:

> In May 2016, Parthenon Capital Partners ("Parthenon" or the "Sponsor") reached an agreement with the Company's shareholders to acquire the stock of Oasis from D.E. Shaw ("Former Sponsor") for $72.5 million purchase price (the "Acquisition"), which is expected to close on August 1, 2016.

87. So by May 2016 – half a year prior to the Transaction – an agreement in principle was reached between seller and buyer. Moreover, D.E. Shaw and Stellus shared management of the Oasis Companies with Parthenon – allowing Parthenon and its employees to act as *de facto* managers of HoldCo.

a. The HoldCo LLC Agreement obliged Shaw Side Pocket and Shaw SPV to provide notice of the offer and/or agreement in principle to the minority members.

b. The HoldCo board (Shayne, Ladd, D'Angelo, and Pollock) also had a fiduciary duty to disclose such information to the minority members.

Parthenon, Shayne, Smolen, and Other HoldCo Officers Partnered Together to Co-Own the Buyer (Intermediate)

88. On July 25, 2016, the defendants created or caused to be created a web of new legal entities under Delaware law that would be used to effectuate a merger structure as part of the Transaction, including: Merger Sub, Intermediate, the Partnership, and the General Partner.

89. The limited partners in the Partnership are Shayne, a trust administered by Shayne's wife, Smolen, Parthenon II, Parthenon IV, and other HoldCo officers.

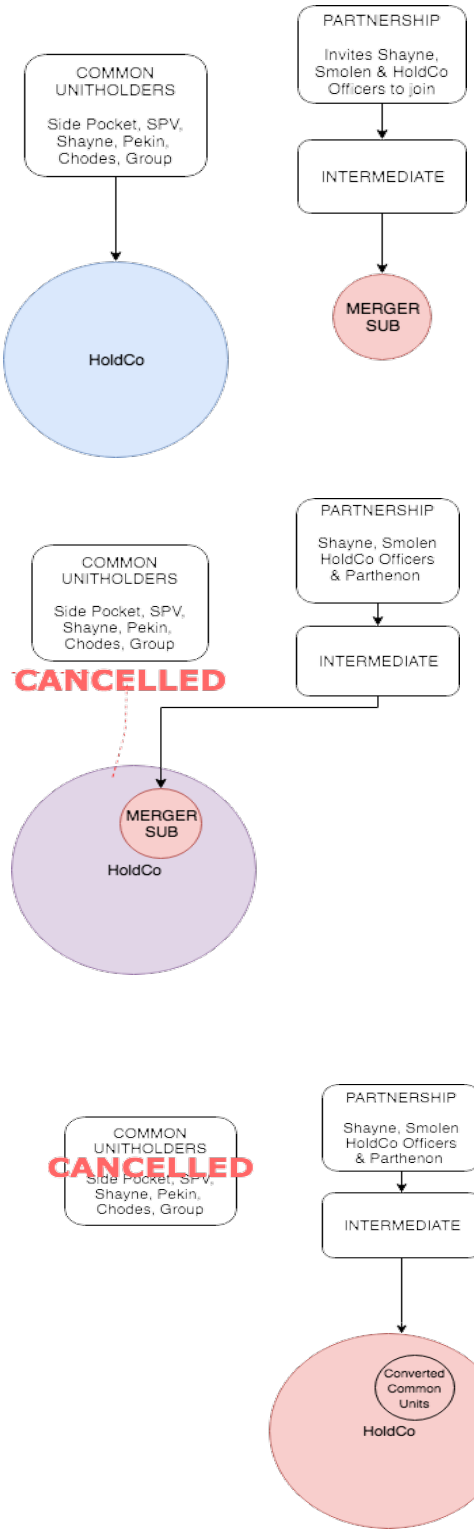
90. The Partnership owns 100% of Intermediate, which bought and acquired 100% of HoldCo in the Transaction.

III. THE TRANSACTION

91. The Transaction ultimately closed on September 9, 2016 (the "Closing Date").

92. Before and after the Transaction, HoldCo continued to own OpCo, which in turn continued to own its subsidiaries. So the pertinent change occurring in the Transaction was at the HoldCo level.

93. The following graphics illustrate the Transaction's merger. But as explained in Part IV, *infra*., adding Merger Sub and converting its interests to Common Units required prior notice.



Transaction Contracts

94. On the Closing Date, the central contract for the Transaction was executed and implemented, called The Agreement and Plan of Merger (the "Merger Agreement").

95. That day the Oasis Companies also entered into three new loan agreements. Smolen executed a "Certificate of Merger Documents" in which he attested to all lenders that the "only material documents related to the Parthenon Acquisition" were:

a. the Merger Agreement;

b. a Management Agreement;

c. an Indemnification Agreement;

d. a Restrictive Covenant Agreement by and among Shaw Side Pocket, Shaw SPV, Shaw Laminar, and Intermediate; and

e. an Escrow Agreement by and among Shaw Side Pocket, Intermediate, and The PrivateBank & Trust Company.

f. All loan agreements and contracts identified in this paragraph are referred to collectively as the "Transaction Contracts."

96. Smolen signed the Certificate of Merger Documents (a) on behalf of HoldCo, OpCo, and OpCo's subsidiaries as their CFO as well as (b) on behalf of Merger Sub as its Vice President. The entities in (a) were all owned by the sellers while Merger Sub was a wholly owned subsidiary of the buyer, Intermediate. Thus, HoldCo's own CFO Smolen had been an officer on the buyers' side prior to the Closing Date.

97. On information and belief, other HoldCo officers also may have become officers or or affiliated with Merger Sub.

98. Because the Transaction Contracts have been produced with a confidential designation by certain defendants and because those documents already were or are possessed by all defendants, Plaintiffs reference but do not attach to this public pleading all of the Transaction Contracts.

Seller Proceeds All Went to Shaw SPV

99. The aggregate consideration (or purchase price) was $71,000,000:

a. $66,230,726.90 was paid to Shaw SPV;

b. $4,769,273.10 was paid to professionals as Transaction expenses; and

c. the "Merger Consideration allocated for payment to Company Unitholders" was "$0.00".

(Merger Agreement, Ex. D.)

Intermediate's Subsidiary Was Merged With and Into HoldCo

100. Intermediate's subsidiary was called Merger Sub. Smolen served as an officer of Merger Sub (as well as HoldCo).

101. On the Closing Date, Merger Sub was merged into HoldCo. HoldCo was the surviving entity of this merger and thereby became a subsidiary of Intermediate.

102. Thus, HoldCo was (a) merged with Merger Sub and (b) thereby combined with and acquired by Intermediate.

Disposition of HoldCo Equity Interests

103. The Merger Agreement purported to cancel and dispose of all HoldCo Common Units that existed prior to the Transaction:

> Each Company Common Unit issued and outstanding immediately prior to the Effective Time and held by a Company Unitholder shall automatically be cancelled and retired and shall cease to exist, such that, as a result of the Merger,

> each Company Common Unit issued and outstanding immediately prior to the Effective Time and held by a Company Unitholder shall automatically be cancelled and retired and shall cease to exist without any conversion thereof, no payment of cash or any other consideration or distribution shall be made with respect thereto, and the holders of such Company Common Units shall cease to have any rights with respect to such Company Common Units.

(Merger Agreement. § 4.1(c).) Special Units in HoldCo also were canceled for zero payment. (*Id.* § 4.1(b).)

104. By contrast, membership interests in Merger Sub were converted into membership interests in HoldCo and preserved. (*Id.* § 4.1(a).)

All HoldCo Members Other Than Plaintiffs Received Compensation, Rights, and Benefits In Exchange for the Ownership Rights and/or In Connection with the Transaction

105. Despite Merger Agreement language suggesting that a HoldCo Unitholder was supposed to receive "no payment of cash or any other consideration or distribution," Plaintiffs have learned that HoldCo members (i.e., Unitholders) Shayne, Pekin Shaw Side Pocket, and Shaw SPV received various forms of information, opportunities to bargain, cash, options, rights, benefits, consideration, and distributions as part of the Transaction.

106. Every equity owner of HoldCo was notified and compensated somehow, except for Group and Chodes.

IV. BREACHES OF THE HOLDCO LLC AGREEMENT

107. The mechanics of the Transaction violated the HoldCo LLC Agreement.

A. Plaintiffs Were Entitled to Receive Advance Notice of Shaw's Impending Disposition of Equity Units

108. Shaw Side Pocket and Shaw SPV are referred to collectively as the "Controlling Members." As set forth below, the Controlling Members intentionally:

a. deprived Plaintiffs of notices to which they were entitled under Article IV of the HoldCo LLC Agreement;

b. concealed facts and information regarding circumstances that would trigger rights and obligations under Article IV; and

c. acted in bad faith in so doing.

Both Plaintiffs Were Entitled to Notice of a Majority Owner's Intention to Transfer or Dispose of Its Common Units

109. The HoldCo LLC Agreement included a number of rights by which Plaintiffs should have been notified of an impending transfer of the Shaw majority owners' interests.

110. If one or both of the Controlling Members wished to an accept an offer whereby the Controlling Members' Units would be sold, conveyed, or even disposed of, then such Controlling Member was required to provide an advance written notice (defined as the "Drag-Along Notice") in order to gain the power to force the same disposition of Units held by Group and Chodes.

> 4.5 Drag-Along Right. If any Shaw-Related Party acting individually, or any group of Shaw-Related Parties acting jointly, wishes to Transfer all or a portion of its/their Preferred Units and/or Common Units constituting not less than fifty percent (50%) of all the Units of such class or classes then held by all Shaw-Related Parties to any independent third party pursuant to a bona fide, good faith offer (any such transferring Member or Members, a "Selling Member"), then such Selling Member shall have the right to require the other Members holding Units of the same class to sell a Pro Rata portion of such other Members' Units of the same class (based on the proportion that the transferred portion of the Selling Member's Units of the class to be Transferred bear to the Selling Member's total Units of such class) to the purchaser in connection with such sale on the terms and conditions set forth in the such purchaser's offer to purchase. Such right shall be exercisable by written notice (a "Drag-Along Notice") given by the Selling Member to each Member holding Units of the same class other than the Selling Member which shall (i) state the portion of such Selling Member's Units to be sold, (ii) state the proposed purchase price per Unit and all other material terms and conditions of such sale (including the identity of the purchaser) and (iii) be accompanied by the written Transfer agreement between such Selling Member and

> such purchaser. Upon receipt of a Drag-Along Notice, each Member holding Units of the class to be Transferred by the Selling Member shall be obligated to sell his, her or its Pro Rata portion of his, her or its Units of the same class for a purchase price equal to the purchase price per Unit described in the Drag-Along Notice and upon the other terms and conditions of such transaction (and otherwise take all reasonably necessary action to cause consummation of the proposed transaction, including voting all such Units in favor of such transaction (if applicable) and becoming a party to the Transfer agreement) (or the Selling Member may enter into such documentation on behalf of the Members pursuant to the power of attorney contained in Section 12.14 as such Selling Member believes is necessary or appropriate in its sole discretion to effect such sale); and provided that if such sale is for all of Units of the Company, the proceeds shall be distributed among the Members in accordance with Section 7.1.

(HoldCo LLC Agreement § 4.5, emphasis added.)

111. "Transfer" is defined in the HoldCo LLC Agreement broadly to include any "disposition" or any means to "otherwise dispose of" Units. (*Id.* § 1.1 at p. 17.)

112. So even if Parthenon's offer or the Controlling Members' agreement in principle called for Units to be canceled, extinguished, given away for no payment, sold for zero dollars per share, *etc*., those are all just different ways to "dispose of" the Units.

113. Any disposition of Units is plainly a "Transfer" as defined in the HoldCo LLC Agreement. (*Id.* § 1.1 at p. 17.)

114. Uses of "shall" in section 4.5 render its mechanisms mandatory. Therefore, a Controlling Member can only garner the right to force minority members to Transfer (i.e., sell or dispose of) their Units on the terms and conditions of the offer by issuing to those minority members the advance written Drag-Along Notice.

115. In turn, minority members only become obliged to sell or otherwise dispose of their Units upon receipt of the Drag-Along Notice from the Controlling Members.

116. Section 4.5 dictates the content of the Drag-Along Notice, which includes all the material information from the purchaser's offer, including price, terms, and conditions.

117. Once minority members are contractually bound to give up their Units – which occurs only upon receipt of the Drag-Along Notice – then either:

a. those minority members must vote for the transaction or must submit the paperwork to effectuate the transaction; or, in the alternative,

b. the Controlling Member can cast the vote or submit consents or sign paperwork on behalf of the obligated minority members by using the power-of-attorney given by section 12.14.

118. To summarize section 4.5 and why the Transaction was improper in plain words: No notice from the selling members = no right to drag along or the force participation of minority members = no obligation on the part of minority members to vote in favor or to submit consents or other documents to effectuate the transaction = no resulting right for a selling member to do it for the minority members using a power-of-attorney.

The Controlling Members Breached Section 4.5

119. Shaw Side Pocket (in collaboration with Shaw SPV, Shaw LP, Shaw LLC, and Shaw Laminar) received an offer, negotiated a price for the sale of HoldCo, and accepted that offer by May 2016. This agreement (and the agreed upon terms) are revealed in joint communications from Parthenon and HoldCo to lenders.

120. The deal was predicated upon Shaw Side Pocket's authority to compel the disposal of all Common Units by 'dragging along' all equity owners.

121. Under section 4.5, there was one means to do that: The power to drag along minority members could only be exercised upon the issuance and receipt of a Drag-Along Notice.

122. No Drag-Along Notice was issued to Group or Chodes.

123. As such, Shaw Side Pocket did not have a right to compel those members to sell or dispose of their Units.

124. In its capacity as "Representative" under the Merger Agreement, Shaw Side Pocket represented and warranted that it had the requisite authority to effectuate all aspects of the Transaction and to Transfer (i.e., dispose of) all Common Units. But Shaw Side Pocket did not comply with § 4.5 because it (a) did not issue a Drag-Along Notice or (b) concealed any Drag-Along Notice from Plaintiffs.

The Controlling Members' Power of Attorney Is Explicitly Subject to the Plaintiffs' Notice Rights

125. The Drag-Along Notice provision (section 4.5, quoted *supra.*) includes an express reference to the power-of-attorney provision (section 12.14.)

126. Section 12.14 provides that members only grant a power-of-attorney "pursuant to the rights and obligations of the Members set forth in Section 4.5 and 5.11(c)." (*Id.* § 12.14.) This language in section 12.14 is instructive and crucial, and so it deserves attention:

a. The Controlling Members' power of attorney is not free-wielding or absolute. It must conform to the other members' contractual "rights" under section 4.5.

b. The right afforded by section 4.5 (a right explicitly referenced and preserved in section 12.14) is, as discussed, a right to advance notice.

c. There are, of course, "obligations" that flow from section 4.5 as well.

    i. Specifically, one obligation is on a minority member to be dragged along on the same terms as the Controlling Member. So if the Controlling Members are about to sell their Units for a dollar a share, a minority member can be compelled to sell his Units for a dollar a share. If the Controlling Members

are going to dispose of their Common Units or transfer them for zero dollars, the minority member can be compelled to do the same. But the plain language of § 4.5 requires a certain type of notice in order to trigger the minority member's obligations.

ii. In addition to selling, transferring, or disposing of Common Units, § 4.5 also can oblige the minority member to vote in favor of the deal between the Controlling Members and the offeror. This, too, is an obligation that only arises from the receipt of the required Drag-Along Notice.

127. The Controlling Members provided no Drag-Along Notice to Plaintiffs, so they never triggered an obligation upon minority owners to go along with a transaction or to vote accordingly.

128. And because the minority owners were not bound to be dragged along, Shaw Side Pocket had no power under § 12.14 to execute any vote, consent, transfer, or disposition on their behalf. Again, by its own terms, the § 12.14 power of attorney was subject to § 4.5. Shaw Side Pocket violated both of those sections of the HoldCo LLC Agreement.

B. Plaintiffs Were Entitled to Receive Advance Notice of the Merger of Merger Sub Into HoldCo

129. Defendants appear to take the position that by incorporating a merger component in the sale of HoldCo to Parthenon, notice could be avoided altogether.

130. The HoldCo LLC Agreement does not embrace or allow this approach where a merger is treated as license for stealth and ambush:

a. Article IV of the agreement mandated notice of an impending merger, whereby another entity would become part of HoldCo. In particular, the LLC Agreement Defendants breached § 4.4.

b. Section 5.11(c), which is the fig leaf for Defendants' position, did not obviate the need for notice and does not excuse the Defendants' pattern of concealment.

Group Was Entitled to Notice of the Controlling Owners' Intention to Admit New Members to HoldCo or Issue New Common Units

131. If new membership interests in HoldCo were to be issued to a third party or if a third party was proposed to be admitted into HoldCo, then HoldCo was required to give advance notice to Group:

> 4.4 Pre-Emptive Rights of Common Members. The Company hereby grants to the Investor Members, the Oasis Group and the Employee Members then employed by the Company the right to purchase the percentage of New Securities equaling their Pro Rata share of Common Units, which the Company may from time to time propose to sell and issue (such right, the "Right to Maintain"). In the event that the Company proposes to undertake an issuance of New Securities, it shall give each such Member written notice of its intention, describing the type of New Securities, the price, and the general terms upon which the Company proposes to issue the same.

(HoldCo LLC Agreement § 4.4, emphasis added).

132. "New Securities" is broadly defined to mean issuance of any membership interests, Units, options, warrants, or rights to purchase or subscribe or securities convertible or exchangeable into Units of HoldCo. (*Id.* § 1.1 at p. 13.)

133. In the Transaction, the Merger Agreement provides that the parties intended "to effect a merger of Merger Sub with and into" HoldCo. (Merger Agreement at p. 1, Recital A.)

134. The membership interests in Merger Sub were "converted into" membership interests in HoldCo. (Merger Agreement §4.1(a).)

135. Under the plain language of the HoldCo LLC Agreement, Group was entitled to advance notice of the New Securities whereby Merger Sub would become a member of HoldCo.

By converting Merger Sub membership interests into HoldCo membership interests, New Securities of HoldCo were, indeed, created.

136. No notice to Group was granted as required by section 4.4. The merger of Merger Sub into HoldCo therefore was not in compliance with the HoldCo LLC Agreement.

The HoldCo Agreement Memorialized a Course of Dealing, a Course of Performance, and the Intention of the Parties With Regard to Providing Notice to Minority Owners

137. Another clause in the HoldCo LLC Agreement supports Plaintiffs' understanding of how the contract operated.

138. Section 3.1 reflected all the parties' understanding that all owners would be notified and allowed to deliberate and participate in a transaction that was mandated by the majority owner Shaw Side Pocket. (*See* HoldCo LLC Agreement § 3.1.)

139. In 2011, Shaw Side Pocket (under the management, advice, and direction of Shaw LP and Shaw LLC) had decided to add one of its affiliates (Shaw SPV) as a 2% equity member of HoldCo. This would reduce the minority members' ownership share. The then-existing minority owners were notified in advance and had to waive their various rights under the LLC Agreement. (*See id.* § 3.1.)

140. Section 3.1 confirms that all parties understood all owners to have a right to advance notice and to be informed when the majority owner contemplated a transaction affecting ownership stakes in HoldCo.

141. Section 3.1 reflects and memorializes past practice, a course of dealing, and a course of performance. The parties' course of dealing and common understanding of how the LLC agreement works belies the notion that D.E. Shaw could admit a new party into HoldCo or transfer any member's equity stake to another party in secret without providing advance notice and information to the minority owners/members.

142. In any event, under the plain language of the HoldCo LLC Agreement (as discussed previously), the merger did not comply or comport with section 4.4.

C. The Merger Was and Is Void Under Article IV of the HoldCo LLC Agreement

143. The most stark and unforgiving provisions bargained for in the HoldCo LLC Agreement address purported Transfers or New Securities done contrary to the agreement.

> To the fullest extent permitted by law, any purported Transfer by a Member or any Assignee that is not in compliance with this Agreement is hereby declared to be null and void and of no force or effect whatsoever.

(HoldCo LLC Agreement § 4.1.)

> Any purported issuance of New Securities by the Company that is not in compliance with this Agreement is hereby declared to be null and void and of no force or effect whatsoever.

(*Id*. § 4.2.)

144. Shaw Side Pocket did not issue a Drag-Along Notice, so no obligation arose for Plaintiffs to sell, dispose of, or otherwise transfer their Units. (*Id.* § 4.2.) Without compliance with § 4.5, Shaw Side Pocket was not empowered to act on Plaintiffs' behalf as power-of-attorney. (*See id*. § 12.14 (requiring compliance with the rights afforded by § 4.5).) The Transaction purported to Transfer HoldCo's Common Units – i.e., to dispose of all Common Units except those held by Merger Sub. (Merger Agreement § 4.1.) That Transfer was not in compliance with the HoldCo LLC Agreement, and therefore must be deemed void. (HoldCo LLC Agreement § 4.1.)

145. HoldCo did not issue a notice of its intention to undertake any New Securities and did not afford Group its 'Right to Maintain' – in violation of the HoldCo LLC Agreement. (*Id.* § 4.4.) The Merger Agreement called for New Securities by conversion of Merger Sub membership interests into HoldCo membership interests. (Merger Agreement § 4.1.) That document was planned (and so HoldCo's intention traced back) months prior to the Transaction. The New

Securities – i.e., by which Merger Sub became part of HoldCo, and by which HoldCo became combined with a new parent Intermediate – were void. (HoldCo LLC Agreement § 4.2.)

146. Per the plain directive of the HoldCo LLC Agreement, the proper remedy is to rescind or declare void *ab initio*:

a. the cancellation or extinguishment of any HoldCo Common Units;

b. the conversion of Merger Sub membership interests into HoldCo membership interests;

c. the purported merger of Merger Sub with and into HoldCo;

d. the purported cancellation of Merger Sub as a separate LLC;

e. the designation of HoldCo as a subsidiary of Intermediate; and

f. any supposed ownership or parent-subsidiary relationship between Intermediate and HoldCo.

147. In sum, (a) Merger Sub did not merge into HoldCo, and so (b) HoldCo is not and never became a wholly owned subsidiary of Merger Sub's parent Intermediate.

D. <u>The Transaction Also Is Void Under Article V of the HoldCo LLC Agreement</u>

148. Separate from and in addition to the foregoing reasons under Article IV why the merger was void, the merger is voidable under Article V.

149. The defendants' basis for and justification of the concealed, no-notice Transaction is section 5.11(c) of the HoldCo LLC Agreement. (Merger Agreement at p.1.)

150. Reliance on Section 5.11(c) is fatal because, as set forth below, the LLC Agreement Defendants breached that particular provision. By not complying with the fairness opinion requirement, Shaw Side Pocket had no power to cast any vote to approve the merger.

151. In any event, 5.11(c) would not support the weight defendants place upon it or excuse their breaches of duties because Article V of the HoldCo LLC Agreement does not eliminate or override advance notice requirements in Article IV (§§ 4.4—4.7).

152. Throughout Article V of the HoldCo LLC Agreement, the words "approval" and "consent" are used together when referring to means of indicating votes for or against some measure or action by managers or members. (*See, e.g.*, HoldCo LLC Agreement §§ 5.2, 5.3, 5.4.) The contract uses "consent" to refer to a written means used in lieu of a full meeting and voice vote. (*See id.* §§ 5.8(f), 5.12(g).)

153. Section 5.11(c) would allow Shaw Side Pocket the right to cast a vote, consent, or approval – i.e., provided that § 5.11(c) itself was otherwise complied with, which did not happen here – without also obtaining the vote, consent, or approval from the minority owners. But that provision does not mention – much less retract – any of the notice rights and obligations otherwise imposed by Article IV.

Plaintiffs Were Entitled to a Fairness Opinion as a Mandatory Condition Precedent to Shaw Side Pocket's Right to Vote or Submit Consent on Behalf of All Members

154. Section 5.11 of the HoldCo LLC Agreement sets forth the mechanics for the "Voting Rights of Common Members." (HoldCo LLC Agreement at p. 34.)

> (c) Merger; Sale of Assets. The Company or any of its Subsidiaries (or all or any part of its assets) may be sold, or the Company or any of its Subsidiaries may be merged, consolidated, or combined with or into another entity, at any time, and for any reason, upon the Approval of the Common Members, and without the consent or approval of any other Member or Manager; provided, however, that in the event of a merger or combination of the Company or any of its Subsidiaries with any Shaw-Related Party, the Company shall obtain a fairness opinion running to all Common Members from an appraiser or investment bank selected by the Investor Members and reasonably acceptable to the Employee Members then employed by the Company holding a majority of the Common Units held by such Employee Members.

(HoldCo LLC Agreement § 5.11(c), emphasis added.) This underlined language is referred to herein as the "Fairness Opinion Proviso").

The Buyer and Merger Sub Were Shaw-Related Parties as Defined in the LLC Agreement

155. To determine whether the Fairness Opinion Proviso applied, one must examine whether HoldCo was merged or combined with "any Shaw-Related Party."

> "Shaw-Related Parties" means D. E. Shaw, Laminar and any other entities directly or indirectly affiliated with D. E. Shaw or with David E. Shaw, including subsidiaries of and entities that are Affiliates of D. E. Shaw or David E. Shaw, investment vehicles to which investment management services are provided by any of the foregoing, and the respective employees (including, without limitation, David E. Shaw) of any of the foregoing; provided, however, that the term Shaw-Related Parties does not include the Company Parties.

(HoldCo LLC Agreement p. 16, emphasis added.) As a reminder of certain definitions:

a. D.E. Shaw = Shaw Side Pocket. (*Id.* p. 7.)

b. Laminar = Shaw SPV. (*Id.* p. 11.)

c. Affiliate (i.e., the defined capitalized terms) = an entity that controls, or is controlled by, or is under common control with another. (*Id.* p. 2.) HoldCo and OpCo were Affiliates of Shaw Side Pocket.

156. The following combination occurred as part of the Transaction:

a. Merger Sub was merged with and into HoldCo.

b. Merger Sub automatically ceased to exist.

c. HoldCo thereby became the wholly owned subsidiary of Intermediate (the Buyer).

157. The question, then, is whether Merger Sub or Intermediate were either "directly or indirectly affiliated with" any of the following, which were covered by the definition of Shaw-Related Parties:

a. David E. Shaw

b. any of the D.E. Shaw entity entities

c. Stellus

d. Stellus Public

e. HoldCo

f. OpCo

If Merger Sub or Intermediate were directly or indirectly affiliated with any of these, then Merger Sub and/or Intermediate was a Shaw-Related Party under the HoldCo LLC Agreement.

158. For many reasons (any one of which alone would suffice) Merger Sub and/or Intermediate were, indeed, so affiliated.

159. In July 2016, HoldCo, Shayne, Smolen, and Parthenon together created Intermediate and Merger Sub (i.e., during the period when D.E. Shaw and Stellus shared day-to-day management of the Oasis Companies with Parthenon). On information and belief, D.E. Shaw-Related Parties helped form and provide officers and/or personnel for Merger Sub and/or Intermediate. For example, Smolen was Vice President of Merger Sub at the same time he was CFO of the Oasis Companies. On the Closing Date, Smolen signed the Certificate of Merger Documents in two capacities:

a. as Chief Financial Officer of HoldCo, OpCo and OpCo's subsidiaries, and

b. as Vice President of Merger Sub.

160. A loan agreement from the Transaction Contracts specifically points out that Merger Sub was affiliated with HoldCo and OpCo as co-borrowers "before" the merger of Merger Sub into HoldCo and "prior to the Parthenon Acquisition" (i.e., prior to Intermediate becoming HoldCo's parent). (Fifth Amended and Restated Credit Agreement of Oasis Legal Finance Operating Company, LLC, Oasis Legal Finance, LLC, Oasis Legal Finance Operating Company, LLC, OFLC, LLC, and Oasis Merger Sub, LLC, page 1, which is attached as Exhibit 3.) The defendants repeatedly emphasized in the loan documents that this co-borrower affiliation occurred prior to the merger.

161. Other Transaction Contracts, too – all negotiated and drafted months ahead of the Closing Date – reflect the various facets of indirect affiliation between (a) HoldCo and (b) Intermediate and/or Merger Sub.

162. In sum, HoldCo merged with Merger Sub, and HoldCo combined with Intermediate. Both Merger Sub and Intermediate were Shaw-Related Parties as defined in the HoldCo LLC Agreement.

HoldCo and Shaw Side Pocket Breached Section 5.11(c)

163. Because HoldCo was to be merged with a Shaw-Related Party (Merger Sub) and combined with another Shaw-Related Party (Intermediate), "the Company shall obtain a fairness opinion running to all Common Members…." (HoldCo LLC Agreement § 5.11(c).

164. The use of 'shall' rendered the Fairness Opinion Proviso mandatory.

165. HoldCo did not obtain a fairness opinion running to Group or Chodes, who each were Common Members of HoldCo.

166. As a result, Shaw Side Pocket and HoldCo together breached section 5.11(c) when they approved the merger.

167. The merger and the Transaction (which centered upon the merger) are both void or at least voidable on this basis.

E. The Merger Voting Mechanism in Section 5.11(c) Did Not Obviate the Notice Provisions in Article IV

168. If the defendants had obtained a fairness opinion running to Chodes and Group, the latter would have known about the merger. So prior notice was contractually mandatory for any merger or combination with a Shaw-Related Party as defined.

169. But even if that were not the case or even if a fairness opinion had been obtained, section 5.11(c) neither eliminates nor overrides the notice minority owners were entitled to receive under Article IV.

170. Perhaps that is not surprising, since 5.11 is a section about how voting rights worked. Where Shaw Side Pocket was empowered to vote or submit consents to approve a merger on behalf of everyone, then it is true that it need not get a vote, approval, or consent from any other member. A consent is a written form that can be used in place of voting at a meeting. Section 5.11(c) does not mention notice, much less retract or withdraw notice rights given in other sections.

171. Just the opposite: The HoldCo LLC Agreement provides that the use of written consents can obviate merely other provisions in Article V (e.g., those having to do with voting at a meeting). "Notwithstanding any other provisions contained in this ARTICLE V, all actions provided for herein may be taken by written consent without a meeting…." (HoldCo LLC Agreement § 5.12(g).)

172. The authorization to use consents without a formal meeting specifically does not override anything from Article IV. Therefore, nothing in section 5.11(c)'s reference to the use of consents would trample upon notice rights found in Article IV.

173. Accordingly, section 5.11(c) does not salvage or excuse the merger, Transaction, or breaches of notice rights under Article IV. The merger and the Transaction were and are void.

F. Plaintiffs Were Entitled to Receive Manager-Level Information and to Participate in the Board of Managers

174. A separate set of breaches of the HoldCo LLC Agreement involve the Plaintiffs' right to manage HoldCo and sit on its board.

175. The following parties are referred to collectively as the "LLC Agreement Defendants:"

a. Shayne, Shaw Side Pocket, Shaw SPV, and HoldCo were signatories to and bound to comply with the HoldCo LLC Agreement.

b. Shayne, Ladd, D'Angelo, and Pollock were named as managers of HoldCo and were bound to comply with the LLC Agreement when acting as the board of managers.

As set forth below, the LLC Agreement Defendants breached the HoldCo LLC Agreement by depriving Plaintiffs of their rights with regard to the HoldCo board of managers.

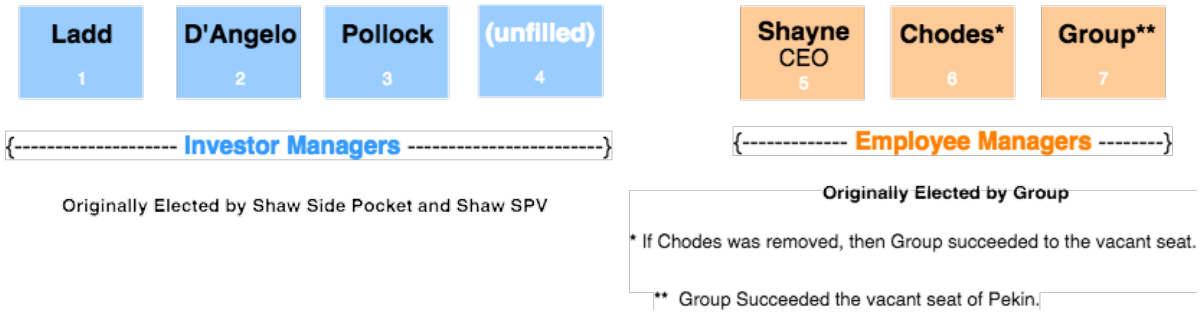
176. As detailed below, Plaintiffs had the contractual right to receive all information to which HoldCo's board of managers was privy in late 2015 and in 2016 because one of both Plaintiffs were contractually entitled to sit on that HoldCo board. That includes Group's right to succeed to a vacancy created by the departure of an Employee Manager for any reason. (HoldCo LLC Agreement § 5.5.)

177. Chodes was never formally or properly removed as a manager of HoldCo. But even if he had been, Group itself (or another manager elected by Group) would fill the resulting vacancy.

178. Rather than allowing Plaintiffs to exercise their contractual rights to participate in HoldCo's management, the LLC Agreement Defendants willfully frustrated and prevented the

exercise of such right by depriving Plaintiffs of notice prior to board activities and concealing board meetings, votes, actions, decisions, and activities (even after they occurred).

The 7-Seat HoldCo Board



179. HoldCo was managed by a board of managers. (*Id.* § 5.1.) "The number of Manager positions shall be seven (7)." (*Id.* § 5.2.)

180. Shaw Side Pocket and Shaw SPV are defined in the agreement as "Investor Members." (*Id.* § 1.1 at p. 11.) Those Investor Members had the right to elect 4 out of the 7 managers for the board, known as "Investor Managers." (*Id.* § 5.4.)

181. If fewer than 4 managers were elected to the Investor Manager seats, those named still had the right to case 4 votes. (*Id.* § 5.3.)

182. Group had the contractual right to elect three (3) managers for the HoldCo board, which are referred to as "Employee Managers. (*Id.* § 5.4.)

183. This right belonged to Group because Group held the majority of Common Units held by all of the Insider Members (who were Group, Chodes, Shayne, and Michael Pekin). (*Id.* §§ 1.1, 5.4; Securities Purchase Agreement dated Feb. 22, 2007 at Schedule B (naming the Insider Members); *see also* HoldCo LLC Agreement § 12.22 (referencing that the definition of "Insider Members" was taken from the Securities Purchase Agreement.)

184. Notice of HoldCo board meetings was required to go to every manager. (*Id.* § 5.8(b).)

185. Notice of board meetings is never waived – except for circumstances (inapplicable here) where a manager attends the meeting despite not having received notice. (*Id.* § 5.8(d).)

Group Succeeded Any Employee Manager Vacancy

186. As noted, Group's right to elect the 3 Employee Managers inhered for each and every meeting or call for consents. (*Id*. § 5.4.)

187. Group had the contractual right to itself fill any vacancy created by the departure for any reason of a manager who was originally elected by Group. "Any vacancy occurring for any reason in the number of Managers shall be filled by the same Member, Members or Managers that elected the Manager who created the vacancy." (HoldCo LLC Agreement § 5.5.)

188. If and when any vacancy should occur in an Employee Manager seat (e.g., by Michael Pekin's departure and/or by any attempt to remove Chodes), Group would fill such seat. (*Id*. § 5.5.) So Group was entitled to notice of any meetings where an Employee Manager seat would be vacant or where the Board intended to create a vacancy by removing a manager originally elected by Group. Neither Group nor Chodes ever received any such notices.

189. Any supposed waiver of Group's right (or any right under the LLC agreement) would need to have been in writing and specifically approved by Group. (*See id.* § 12.2(a, b).) No such waivers were ever executed by Group.

Chodes Was Entitled to Notice of Upcoming Board Meetings

190. Chodes had the contractual right to receive all information to which HoldCo's board of managers was privy in late 2015 and in 2016 because Chodes himself was one of the Employee Managers on the HoldCo board who was never properly removed.

191. Chodes never received any notice of any upcoming board meeting at which the board would attempt to remove Chodes as a manager. (*See* HoldCo LLC Agreement § 5.6.) "Unless removed in accordance with this Agreement, each Manager shall hold office until such person's successor shall be elected and qualified." (*Id.* § 5.4.)

192. Assuming *arguendo* the HoldCo board had attempted to remove Chodes, Group would have succeeded Chodes to the seat. (*Id.* § 5.5.) It follows, then, that Group also would have been entitled to notice of such a meeting and/or notice of any purported resulting vacancy in the board seat occupied by Chodes.

193. No such notices were provided to Chodes or to Group.

The LLC Agreement Defendants Willfully Denied Plaintiffs Notices Regarding the Board and Excluded Them From All Manager-Level Actions and Information

194. Plaintiffs were entitled to notice of any actions described in § 5.9 of the HoldCo LLC Agreement, which should have been presented to the board of managers. That would include all aspects of the sale process, the evaluation of bids and offers, negotiations and due diligence, an agreement in principle, the allowance of Oasis officers to bargain for themselves with the buyer, and the Transaction.

195. The LLC Agreement Defendants breached the HoldCo LLC Agreement by denying and withholding from Plaintiffs notice of meetings, calls for consents, votes, conference calls, and other actions, as well as informal and formal: management decisions, communications with managers, the provision of information to and among managers, manager activities, meetings to which managers were included, etc.

196. Even if this Court were to conclude for any reason that Group and/or Chodes were not entitled to be managers themselves, Group still was entitled to learn of all the same information and developments directly from Shayne, who was a fiduciary of and owed fiduciary duties to

Group. Even if a lack of notice of a board meeting or board action did not rise to the level of a breach of the HoldCo LLC Agreement, concealing it from Group still would be a breach of Shayne's fiduciary duties to Group.

197. For the foregoing reasons, the HoldCo LLC Agreement was breached before, during, and after the Transaction.

V. SOURCES OF LEGAL DUTIES

198. Below are set forth the various legal duties – arising from common law and contract – that specific defendants owed to Plaintiffs.

199. Breaches of these duties are set forth in the separate counts under the heading Causes of Action.

Shayne Owed to Group the Fiduciary Duties Recognized Under Delaware Common Law

200. Group was organized under Delaware law, and Section 12 of Group's LLC includes a Delaware choice of law provision. 6 Del. Code § 18-1101(i).

201. The Delaware Limited Liability Company Act (the "Act") provides that traditional fiduciary duties apply as the 'default' – i.e., except to the extent that those traditional duties have been expanded, restricted, or eliminated by an LLC agreement. 6 Del. Code §§ 18-1104, 18-1101(c). "[M]anagers of a Delaware limited liability company owe traditional fiduciary duties of loyalty and care to the members of the LLC, unless the parties expressly modify or eliminate those duties in the operating agreement." *William Penn P'ship v. Saliba*, 13 A.3d 749, 756 (Del. 2011).

202. Group's LLC Agreement does not restrict, modify, or eliminate fiduciary duties for its managers or officers.

203. Shayne was a manager of Group between 2005 and February 2018. Shayne also is and has been since at least 2004 Group's Vice President and CFO.

204. Shayne therefore owed to Group the fiduciary duties prescribed by Delaware law.

205. In addition, Shayne became the CEO of HoldCo in mid-2013.

206. The HoldCo LLC Agreement did not and does not limit, restrict, or eliminate any fiduciary duties for officers of HoldCo. Just the opposite: "The officers will have the responsibilities, power, authority, duties (including fiduciary duties), restrictions and limitations similar to those of senior executive officers of a Delaware corporation unless otherwise determined by the Managers." (HoldCo LLC Agreement § 5.10, emphasis added.)

207. Group and Chodes were minority equity owners of HoldCo.

208. As an officer of HoldCo, Shayne owed common law fiduciary duties to Group and Chodes.

209. In addition, Shayne sat on the board of managers for HoldCo.

210. As noted previously, a manager of a Delaware LLC owes fiduciary duties to the members of that LLC unless those duties are explicitly restricted or eliminated by the LLC Agreement.

211. The HoldCo LLC Agreement did not and does not limit, restrict, or eliminate any fiduciary duties for any managers of HoldCo who are "Company Parties." (HoldCo LLC Agreement § 11.1(b).) Shayne was a "Company Party" under the agreement. (*See id.* at page 6.)

212. As a manager on the board of HoldCo, Shayne owed fiduciary duties to HoldCo's members (i.e., equity owners).

213. In a situation like Shayne's – where one person occupies multiple officer or manager/director roles in two related companies – his fiduciary duties to each operate in full:

> There is no 'safe harbor' for such divided loyalties in Delaware. When directors of a Delaware corporation are on both sides of a transaction, they are required to demonstrate their utmost good faith and the most scrupulous inherent fairness of the bargain. The requirement of fairness is unflinching in its demand that where

> one stands on both sides of a transaction, he has the burden of establishing its entire fairness, sufficient to pass the test of careful scrutiny by the courts.
>
> There is no dilution of this obligation where one holds dual or multiple directorships, as in a parent-subsidiary context. Thus, individuals who act in a dual capacity as directors of two corporations, one of whom is parent and the other subsidiary, owe the same duty of good management to both corporations, and in the absence of an independent negotiating structure …, or the directors' total abstention from any participation in the matter, this duty is to be exercised in light of what is best for both companies.

Weinberger v. UOP, 457 A.2d 701, 710—11 (Del. 1983).

214. In sum: Shayne owed the fiduciary duties recognized by Delaware common law:

a. to Group in his capacity as Group's own officer and manager; and

b. to Group and Chodes in his capacity as HoldCo's officer and manager.

215. None of those sources of fiduciary duties owed by Shayne were eliminated by contract. And none of those duties was diluted or reduced by virtue of Shayne's dual roles at Group and HoldCo.

Contractual Duty of Good Faith Owed by Shayne

216. In addition to his common law fiduciary duties, Shayne as a manager of HoldCo also was contractually required to act and deal in good faith. (HoldCo LLC Agreement §11.1(a).)

217. This duty is imposed in addition to any default common law duties. (*Id.* § 11.1(b).)

218. The contract denies Shayne the benefit of various liability restrictions or other protections contained in Section 11.1. (*Id.*)

Fiduciary Duties Owed by Ladd, D'Angelo, and Pollock With Certain Contractual Defenses or Limitations

219. Along with Shayne, the other managers on the board of HoldCo during the events at issue were Ladd, D'Angelo, and Pollock. (HoldCo LLC Agreement Ex. A.) These three were the "Investor Managers" as defined by the HoldCo LLC Agreement. (*Id.* at §§ 5.3, 5.4.)

220. The contract required the Investor Managers of HoldCo to act and to deal in good faith. (HoldCo LLC Agreement 11.1(a).)

221. Under Delaware law, elimination of fiduciary duties for an LLC must be explicit, and the contract must be clear to entirely supplant default duties.

222. The HoldCo LLC Agreement does not eliminate fiduciary duties for Investor Managers. Instead, the contract merely offers certain potential defenses that Investor Managers can assert with regard to their duties (i.e., insofar as they are "Covered Persons"). (*E.g., id.* § 11.1(d).)

223. Also, if the Investor Managers of HoldCo engaged in acts or omissions that constitute either willful misconduct or fraud, then the contract does not limit their financial liability. (HoldCo LLC Agreement §§ 11.1(b), 11.1(d), 11.1(f).) Under Delaware law, willful misconduct means intentional wrongdoing, such as conduct designed to defraud or to seek unconscionable advantage.

Fiduciary Duties Owed by Shaw Side Pocket and Shaw SPV With Certain Contractual Defenses or Limitations

224. Under Delaware common law, a member/owner with a controlling stake in the LLC owes traditional fiduciary duties to the minority owners.

225. The HoldCo LLC Agreement does not eliminate fiduciary duties for controlling owners. (Any restriction or elimination of fiduciary duties would have been required to be explicit and clear or to entirely supplant default duties.) Instead, the contract merely offers certain potential

defenses that controlling owners can assert (i.e., insofar as they are "Covered Persons"). (*E.g., id*. § 11.1(d).)

226. In addition, if the controlling owners of HoldCo engaged in acts or omissions that constitute either willful misconduct or fraud, then the contract does not limit their financial liability. (HoldCo LLC Agreement §§ 11.1(b), 11.1(d), 11.1(f).)

227. Shaw Side Pocket owned 80% of the equity and was the controlling owner/member.

228. Shaw Side Pocket and Shaw SPV (i.e., another equity owner HoldCo) together constituted a 'control group' under Delaware law over the HoldCo board and HoldCo generally. (*See, e.g.,* HoldCo LLC Agreement § 1.1 at pp. 7 & 11; *id* §§ 5.3, 5.4, 5.7.)

229. Shaw LP and Shaw LLC advised, managed, directed, and controlled the affairs of this control group of HoldCo.

Fiduciary Duties Owed by Smolen

230. Smolen was the CFO of HoldCo.

231. As an officer of HoldCo, Smolen had owed all the common law fiduciary duties to minority owners of HoldCo. Such duties were not limited by contract; rather, the HoldCo LLC Agreement confirms that Smolen was obliged by common law fiduciary duties. (HoldCo LLC Agreement § 5.10.)

Duties Owed by Parthenon

232. By May 2016, Parthenon was acting as a *de facto* manager and/or officer of HoldCo and OpCo.

233. Parthenon, Shayne, and Smolen together negotiated with lenders of HoldCo and OpCo.

234. Parthenon, HoldCo, Shayne, and Smolen arranged for the creation of new affiliate entities with which they planned to combine HoldCo. Those entities were Merger Sub and Intermediate.

235. Actions taken by HoldCo and OpCo between May 2016 and the Closing Date appear to have been done with managerial guidance from Parthenon.

236. Parthenon therefore should be deemed to have assumed – at minimum – the duty of good faith prescribed for managers of HoldCo. (HoldCo LLC Agreement § 11.1(a).)

237. If the Court deems Parthenon to have acted as de factor officers, the Parthenon should be deemed to have assumed duties of a fiduciary (to the minority owners of HoldCo) under Delaware common law. (*Id.* § 5.10.)

Covenant of Good Faith Applies to Shaw Side Pocket, Shaw SPV, the Three Investor Managers, Shayne, and Smolen

238. A covenant of good faith and fair dealing is implied and could not be waived contractually. The covenant requires faithfulness to the purpose and terms of the LLC parties' contract(s).

239. If a member, manager, or officer of HoldCo engaged in an act or omission that constitutes a bad faith violation of the implied covenant of good faith and fair dealing, then the Act bars the HoldCo LLC Agreement from being used to limit or eliminate such defendant's liability for the bad faith act or bad faith omission. *See* 6 Del. Code § 18-1101(e).

240. To the extent any of these defendants asserts for any reason that the explicit good faith obligation of section 11.1(a) of the HoldCo LLC Agreement does not apply to him or it, then in the alternative the implied covenant should apply to such defendant(s).

The HoldCo LLC Agreement Adopted a Corporation-Style Management Structure

241. HoldCo's management was structured under the HoldCo LLC Agreement akin to the structure of a corporation. (HoldCo LLC Agreement Article V.) In honoring the freedom of contract, Delaware law instructs this Court to heed the parties' voluntary selection of a corporate board model of governance for their LLC:

> Using the contractual freedom that the LLC Act bestows, the drafters of an LLC agreement can create an LLC with bespoke governance features or design an LLC that mimics the governance features of another familiar type of entity. The choices that the drafters make have consequences.
>
> … If the drafters have opted for a manager-managed entity, created a board of directors, and adopted other corporate features, then the parties to the agreement should expect a court to draw on analogies to corporate law.

Obeid v. Hogan, No. 11900-VCL, at *11—12 (Del. Ch. June 10, 2016).

> In this case, the Corporate LLC Agreement substantially re-creates the governance structure of a Delaware corporation using language drawn from the corporate domain. As noted, the Corporate LLC Agreement creates a manager-managed LLC and empowers the Corporate Board to act as the manager.
>
> … This provision establishes a board-centric governance model tracking that of a corporation.
>
> … The presence of these corporate traits in the Corporate LLC Agreement calls for applying corporate precedents to derivative claims involving the entity.

Id. at *14—16. Thus, the contours of the legal duties of Shayne, Ladd, D'Angelo, and Pollock can should be gleaned not only from the HoldCo LLC Agreement but also from Delaware corporate law regarding directors.

VI. THE DEFENDANTS ENGAGED IN WILLFUL MISCONDUCT AND FRAUD

242. Plaintiffs' investigation has produced evidence substantiating the allegations. The items below reflects the lack of good faith on the defendants' part.

A. Undisclosed Relationships and Self-Dealing

243. All four managers on the HoldCo board received side benefits from Parthenon – tantamount to bribes or kickbacks – as described below.

244. Ladd, Pollock, and D'Angelo founded and are the executives of both Stellus and Stellus Public.

245. The following facts were not disclosed to Plaintiffs but rather were concealed: Stellus, Stellus Public, Ladd, D'Angelo, and Pollock had outside lucrative business dealings with Parthenon.

a. Stellus and/or Stellus Public provided financing to a company in Oak Brook, Illinois called Millennium Trust and its parent MTC Parent Company, L.P. (collectively "Millennium").

b. Millennium is ultimately owned by Parthenon or an entity under Parthenon control.

c. Parthenon personnel sit on and control the Millennium board(s).

d. At Parthenon's direction, Millennium granted equity interests, options, and/or other benefits to Stellus and/or Stellus Public. These were special, atypical, or 'sweetheart' benefits for Stellus and/or Stellus Public.

e. Millennium granted equity to Stellus Public during the fourth quarter of 2015 – the same time as the bidding on the Oasis Companies.

f. Following the sale of the Oasis Companies to Parthenon, Stellus and/or Stellus Public have since received millions in payments from Millennium – aside from and in addition to normal finance fees.

g. For example, on February 8, 2017, Stellus Public received a 'dividend' of $0.7 million and on January 30, 2018, Stellus Public received a 'dividend' of $1.35 million from Millennium.

246. Other defendants benefit indirectly from the kickbacks flowing from Millennium through Stellus Public. D.E. Shaw (through its affiliated entities) owns stakes in both Stellus and Stellus Public, and Raymond James is a stockholder in (and/or was a lender to) Stellus Public.

247. Ralph Shayne received the following jobs from Parthenon:

i. CEO of the sold or merged Oasis Companies under Parthenon's control;

ii. a manager of the sold or merged Oasis Companies or their parent; and

iii. in-house "executive in residence" at Parthenon.

248. Shayne also was granted equity in the Partnership that owns the Oasis Companies. Shayne negotiated these positions and personal benefits during the time he was supposed to be:

a. negotiating on behalf of the sellers of the Oasis Companies;

b. honoring his direct fiduciary duties to Group; and

c. honoring his fiduciary duties to the minority equity owners of HoldCo.

249. Smolen received positions from Parthenon as well. Smolen was named CFO of the post-Transaction Oasis Companies. Smolen was given equity in the Partnership that owns the Oasis Companies

250. It also was not disclosed to Plaintiffs before, during or after the Transaction that HoldCo's officers (including also Debbie McKean and Colin Lawler) had agreed – long before the Transaction – to become part of the Partnership that would own HoldCo.

251. In sum, the parties who evaluated, negotiated, approved, or recommended approval of the sale to Parthenon – at a slashed purchase price – had serious conflicts of interest. Further, they have received side deals and back channel benefits and remuneration from Parthenon.

B. Defendants Did Not Attempt to Maximize the Value of the Oasis Companies

252. D.E. Shaw was intent to divest itself of the few remaining assets in Shaw Side Pocket, including equity ownership in the Oasis Companies. Shaw Side Pocket had become a 'zombie fund.'

> Zombie funds are private equity vehicles that deployed investor's capital at peak valuations, often just before the market tanked during the recession, and then were forced to hang onto their assets much longer than the norm, looking for a way out. After years of economic recovery they are still unable to sell off their assets at a profit, even during our current good times, which is resulting in yet more such private equity funds turning into ghouls.

R. Milburn, "Private Equity: Beware of Zombie Funds," BARRON'S (Aug. 7, 2015).

253. Shaw Side Pocket was an older fund that had outlived its useful life to D.E. Shaw. Fees for managing this zombie fund had become negligible. For certain assets remaining in the Shaw Side Pocket fund – such as the Oasis Companies – D.E. Shaw and Stellus were splitting fees, which made the retention of such assets even less desirable to each.

254. As a result, D.E. Shaw allowed Stellus to get what it could for the Oasis Companies, using the Shaw SPV 'debt' as a contrived means to take all or almost all proceeds.

255. The Stellus leaders Ladd, D'Angelo, and Pollock wanted to shed responsibility for the Oasis Companies. These Defendants were preoccupied with an upcoming Spring 2017 announcement of follow-on public offerings of stock in Stellus Public. Preparations for and work on these Stellus public offerings were in full swing during the sale process of the Oasis Companies.

256. In fact, Raymond James had been hired by Stellus to prepare those public stock offerings for Stellus Public during the sale process for the Oasis Companies. Raymond James' analyses and work on the upcoming Stellus Public stock offerings were in full swing during the sale process for the Oasis Companies.

257. In 2016, Raymond James, Stellus, Ladd, D'Angelo, and Pollock made their highest priority the preparations for the upcoming Stellus Public stock offerings.

258. The disinterest of D.E. Shaw, Stellus, and Raymond James explains why they allowed Parthenon to work from the inside at the Oasis Companies and co-manage the affairs by the Spring of 2016 (if not before).

259. In addition to Raymond James' institutional conflicts, even its individual investment bankers were fervent to be done with the Oasis deal. During the sale process for the Oasis Companies, lead investment banker Michael H. Jones and at least four of his colleagues were busy planning to leave Raymond James. During "negotiations" with Parthenon for the sale of the Oasis Companies, Jones and his colleagues had negotiated to be hired by an investment bank called Keefe, Bruyette & Woods, Inc. (a subsidiary of Stifel Financial Corp.). The announcement of Jones' and others' departure from Raymond James came almost immediately after the Oasis Companies transaction closed. On information and belief, any delay in the sale of the Oasis Companies would have disrupted Jones' planned departure from Raymond James to greener pastures.

260. Notwithstanding having market information and professional analyses available to them showing even better economic times in 2017 (which they considered for the good of their own companies but not for Oasis), the defendants pushed for the immediate sale of the Oasis Companies to Parthenon for an undervalued price and ignored obvious alternative options.

261. Instead of acting to maximize value for all owners of the Oasis Companies, the defendants maximized only their own unique compensation, benefits, and side deals. The sale to Parthenon was preordained due to the lucrative relationships Parthenon had with Stellus and Stellus Public. Shayne and other officers agreed to proposals whereby they would be granted free equity in the post-Transaction ownership structure. Parthenon thus compensated defendants who shepherded through the deal and who acceded to false justifications for a low purchase price.

C. David E. Shaw Realized That Stellus Intended to Enrich Itself Rather Than Maximize the Price for the Oasis Companies

262. David E. Shaw or someone in his inner sanctum apparently realized that the Oasis Companies sale process was going to be a compromised, unethical and/or illegal enterprise from its very outset.

263. On May 21, 2015, the HoldCo board of managers – controlled by the three Stellus and Stellus Public officers Ladd, D'Angelo, and Pollock – formally hired Raymond James to conduct the Oasis sale process.

a. In the engagement letter, compensation for the investment bankers was tied to the consideration in a transaction.

b. The definition of consideration specifically included payments to any D.E. Shaw entity that was a creditor of the Oasis Companies purportedly for 'debt.' (Shaw SPV was the only entity that fit that description, either then or since.)

264. By May 2015, Stellus and Stellus Public were already engaged in preparations to provide financing to Millennium, an Illinois business owned by Parthenon. (The resulting Stellus/Millennium transaction occurred later in the fourth quarter of 2015.)

265. So by May 2015, Stellus (a) already was engaged with Parthenon and (b) approved an agreement with Raymond James indicating an intent to channel consideration for the Oasis Companies through Shaw SPV.

266. Just days after the formal commencement of the Oasis Companies sale process by hiring Raymond James, on May 27, 2015, David E. Shaw sold 1,875,000 shares worth over $22 million in Stellus Public stock. This was a massive insider transaction for Stellus Public, and likely the largest sell-off of stock in the company's history.

267. While the web of hedge fund entities might weather the risk of Stellus' planned self-dealing, David E. Shaw wanted no part of those dirty dealings personally. So he divested himself from Stellus Public right then.

268. Mr. Shaw did not, however, put a stop to the Stellus machinations.

D. Defendants Made a Cascade of False Statements to Plaintiffs

269. On September 13, 2016, an attorney named James Witz who represented HoldCo and OpCo before and after the Transaction called to inform an attorney for Gary Chodes of the following, stressing that he was "only the messenger." Witz stated:

- On September 9, 2016, a deal closed to sell the Oasis Companies.
- The price was $71 million.
- All of that money went to the debt holders because the debt exceeded the price.
- Group's ownership of the Oasis Companies was extinguished without any payment.
- According to Witz, the same happened with the majority owner Shaw Side Pocket.

270. Prior to this call, there had been no notice to minority owners Group and Chodes of any: acceptance of a bid; due diligence; negotiation with a buyer; board meeting; member meeting; vote; call for consents; or other official consideration of a proposed deal, sale or merger. So Witz's

communications was obviously carefully planned and became crucial to the Plaintiffs' understanding.

271. Witz's statements were materially false. He claimed that no equity owners received any proceeds, including the majority owner Side Pocket. Yet over a year later, on October 10, 2017, Witz sent a letter to Chodes' counsel and changed the defendants' story, writing:

a. Before the Oasis Companies were sold a side deal (or "inducement") had been struck between Shaw Side Pocket and Shaw SPV.

b. The purpose of the side deal was to induce the equity owners to approve the Transaction, which otherwise would have paid nothing to equity owners.

c. A "transfer" of some sale proceeds was made for the benefit of all equity owners.

d. Out of that transfer, $7.2 million of sale proceeds was offered to, accepted by, and paid to Shaw Side Pocket (an equity owner).

272. Witz's October 10, 2017 letter revealed and proved that representations to Chodes and Group from Witz himself on behalf Defendants in and after September 2016 – i.e., that majority owner Shaw Side Pocket received no proceeds from the sale of the Oasis Companies and therefore was treated the same as Chodes and Group – had been false.

273. Witz indicated that Chodes' or Group's portion of the side deal transfer had "always" been available for equity owners. Yet for over a year, Witz and the defendants had lied, telling Plaintiffs that there were no sale proceeds available for equity owners.

274. The 2017 letter from Witz itself contained falsehoods. The Merger Agreement unequivocally provides that:

a. all seller proceeds were paid to Shaw SPV alone; and

b. owners of Common Units received no compensation or payment.

275. If the "inducement" side deal payment occurred as Witz described, then that means:

a. the defendants discriminated among and treated differently owners of the same class of equity, i.e., Common Units in HoldCo., and/or

b. the Transaction Contracts – explicitly predicated on no payments being made to equity owners – were false.

276. Discovery is needed to determine the facts regarding the supposed side deal "inducement" and Witz's description of payments to equity owners.

E. Defendants Manufactured a False Explanation for the Reduced Parthenon Offer and the Unreasonably Low Purchase Price

277. One thing is certain: the price paid by Parthenon was substantially below (a) the valuation(s) prepared by the sellers and investments bankers in the sale process and (b) an original bid from Parthenon itself.

278. To determine why this occurred, the finder of fact will evaluate (i) the veracity of the defendants' explanations for the reduced offer and low price, (ii) whether defendants acted in good faith, and (iii) the objective indicia of whether the price was, indeed, a fair one.

279. The defendants closest to the sale process have admitted in writing their account of Parthenon's reduction in bid and the resulting low Transaction price. Yet the defendants' own documents show conclusively that their explanation and purported justification for the Transaction was and is false.

280. On October 10, 2017, an attorney-agent for HoldCo, OpCo, Shayne, and Parthenon wrote:

> … over the course of a lengthy due diligence process, Parthenon reduced the price it was willing to pay—and for good reason. Parthenon's due diligence uncovered various revenue-related issues dating from Mr. Chodes' tenure as CEO, and Parthenon lowered its initial bid as a result of those findings….

281. More recently, Raymond James (who shares the same counsel as Shayne, Smolen and Jones in this case) doubled down on the explanation:

> 4. Prior to the sale, Chodes pressured HoldCo into implementing an extremely liberal accrual revenue recognition policy. The revenue recognition policy was proposed in bad faith as it represented an inaccurate, unrealistic view of the HoldCo's revenue. * * *
>
> 8. … The contingent purchase price proposals were reduced as a result of the discovery of the liberal and unrealistic revenue recognition policy, among other things.
>
> 9. After discussing the revenue recognition policy that Chodes had pushed on HoldCo, Parthenon again lowered its proposed purchase price significantly, although not to an amount which was below the other company that was involved in the third round.
>
> 10. The actions of Group, through Chodes, of pushing HoldCo to adopt the unrealistic revenue recognition policy, among other things, drove potential bidders away from the bidding process, caused actual bidders to abandon their interest in acquiring HoldCo, and caused bidders to submit revised purchase price proposals which were significantly lower than their original proposals and which reflected a value for HoldCo which was based on a proper revenue recognition policy.

Verified Answer & Defenses of Raymond James & Associates, Inc., No. 18 L 152 (Oct. 12, 2018).

282. Defendants' explanation for the low price is untrue at every level:

a. The revenue recognition accounting methodology used by OpCo (and then HoldCo) had been in place since at least 2008. This methodology is hereafter referred to as the "Revenue Recognition Policy."

b. Not one but two different accounting firms analyzed and attested to the propriety and GAAP compliance of the Revenue Recognition Policy.

c. The Revenue Recognition Policy was settled upon with D.E. Shaw controlling the OpCo board and then also the HoldCo board of managers.

d. In the event of any conflict among management over accounting methods, by contract D.E. Shaw's view prevailed.

    i. So the notion that Chodes could force or foist an accounting method on the company that D.E. Shaw controlled is silly.

    ii. Moreover, Chodes had been excluded from the Oasis Companies since the Spring of 2013. Shayne, Ladd, D'Angelo, and Pollock – along with Shayne's hand-picked CFO Smolen – controlled the accounting methods of the Oasis Companies for year prior to the Transaction.

e. Every year officers sign audit letters attesting to the truthfulness of information and the GAAP-compliance of the Revenue Recognition Policy. Shayne and Smolen have been among those.

283. Parthenon did not 'discover' the accounting methodology in 2016; Parthenon had analyzed the Oasis Companies' financials years before the Project Kodiak sale process.

a. The Oasis Companies had been marketed for sale back in 2010 and 2011.

b. Parthenon was one of the companies that signed an NDA to get access to confidential information about the Oasis Companies back then.

c. The Revenue Recognition Policy was in place in 2010 and 2011.

284. The notion that the Revenue Recognition Policy was a surprise or that bidders were the first to pay attention to it is patently false. Raymond James, Jones, HoldCo, OpCo, Stellus, Shayne, and Smolen had regular and extensive communications regarding accounting methodology and the Revenue Recognition Policy before the Oasis Companies (referred to as Project Kodiak) were even put on the market. Raymond James then transmitted that information and understanding to potential bidders:

a. The October 2015 Kodiak CIM explained the Revenue Recognition Policy and included a separate section devoted specifically to "Revenue Recognition."

b. Then in November 2015, the Project Kodiak Management Presentation provided vastly more detail and explanation regarding the Revenue Recognition Policy and other accounting methods.

285. But the best evidence that the defendants' explanation is untrue comes from Parthenon itself. Some lenders with which Parthenon communicated recently produced documents.

286. Parthenon, HoldCo, Shayne, and Smolen admitted and assured repeatedly in May 2015 that the Revenue Recognition Policy was nothing more than an accounting preference, which had no impact on the underlying performance or cash flow of the Oasis Companies.

> We anticipate revising our revenue recognition policy to an effective yield model after closing
>
> - Effective yield is a more conservative, well-recognized accounting policy. This change has no impact on actual cash-flow

(Lender Renewal Discussion Package at p. 18, underlining in original.) "Steady cash flow growth [is] not impacted by more conservative accounting." (*Id*. at p. 10.) "Revenue recognition policy change does not impact economics/ cash flow of the business." (*Id*. at pp. 22, 23.)

> We believe that while management has taken a reasonable approach, the inherent imprecision in accurately predicting future performance and the potential for competitive price dynamics are leading us to take a more conservative approach….
>
> * * *
>
> Revenue Recognition: PwC suggests the adoption of the effective yield revenue recognition model, which will have no impact on Company's cash flows, but will slow down revenue accretion….

(*Id*. at p. 25, emphasis added.)

287. A July 2016 Confidential Information Memorandum prepared by FirstMerit Bank in conjunction with Parthenon, HoldCo, Shayne, and Smolen confirmed these same points. "As noted earlier, the anticipated accounting changes will have no impact on the cash flow profile of the business going forward." (July 2016 CIM to Lenders at p. 15.)

288. These documents will prove that the defendants knew full well that any accounting method change Parthenon might make to the Revenue Recognition Policy would not detract from the performance and value of the Oasis Companies. In short, the defendants have put forward a demonstrably false explanation to justify the (unreasonably) low Transaction sale price.

F. The Defendants Eliminated Common Units Belonging to Chodes Prior to the Transaction

289. Chodes owned over 1.5 million Common Units in HoldCo. However, the Transaction Contracts list his total ownership of Common Units as just over 500,000. (*See* Merger Agreement Schedule 7.2.)

290. The defendants took back, transferred, cancelled, or eliminated 1 million Units – a substantial portion of Chodes' equity in HoldCo without any notice before or after doing so. This was no typo because the defendants adjusted the amount of Common Units authorized vs. outstanding to reflect a 1 million Unit reduction. (*See id.*)

291. The defendants did not give Chodes or Group any notice of any board action to accomplish any supposed extinguishment of Common Units.

292. Whatever incredulous explanation the defendants may have for denying notice of the Transaction, that would not explain why there was no notice of a disposition of Chodes' Common Units prior to the Transaction.

293. This incident is emblematic of the defendants' penchant for concealment, disregard of the LLC Agreement, and lack of good faith toward Chodes and the company in which he owns a majority, i.e., Group.

CAUSES OF ACTION

294. Delaware law governs these claims.

Count 1 - Breach of the HoldCo LLC Agreement

(against HoldCo, Shaw Side Pocket, Shaw SPV, Shayne, Smolen, Ladd, D'Angelo and Pollock)

295. Plaintiffs incorporate the allegations in Paragraphs 1 through 293 above as if fully set forth herein.

296. The HoldCo LLC Agreement is a binding, enforceable, and continuing contract, which imposed continuing obligations.

297. Shayne, Shaw Side Pocket, Shaw SPV, and HoldCo were signatories and parties to the HoldCo LLC Agreement.

298. As managers and officers of HoldCo, Ladd, D'Angelo, Pollock, Shayne, and Smolen were required to comply with the HoldCo LLC Agreement.

299. Neither Chodes nor Group has waived any of the rights, protections and benefits afforded them under the HoldCo LLC Agreement.

300. The defendants named in this count breached the HoldCo LLC Agreement in a number of ways and respects.

301. Defendants' breaches of the HoldCo LLC Agreement resulted in damages to Group and Chodes.

302. The defendants breached § 3.9 because the side deal between Shaw Side Pocket and Shaw SPV and the resulting transfer or payment – as disclosed and described by James Witz on

October 10, 2017 – were not done in accord with the HoldCo LLC Agreement and therefore violated § 3.9.

303. The defendants breached § 3.10 by paying compensation to members in their capacities as members. For example, payments to any owners pursuant to the purported side deal would violate § 3.10, as would all other side deals, undisclosed compensation or benefits, and kickbacks to any Member of HoldCo.

304. The defendants breached §§ 4.4, 4.5 and/or 4.6 by failing to give prior notice to Plaintiffs of an impending Transfer (as defined in § 1.1) and Transaction (as defined herein).

305. The defendants breached §§ 4.5 and 4.7(d) by accepting an offer that they knew was not a bona fide, good faith offer. Parthenon (with the help of HoldCo's own officers) raised one or more false bases for price reduction (including the Revenue Recognition Policy). The defendants acceded to what they knew were offers not made in good faith and demands for price reductions on grounds that were not bona fide.

306. The defendants breached § 4.7 by denying Chodes the rights afforded to a holder of Special Units and by failing to pay the redemption price to Chodes. The defendants treated the two holders of Special Units (Chodes and Pekin) differently without justification for so doing.

307. The defendants breached §§ 5.1—5.9 by denying Plaintiffs their rights at each meeting or each call for consents: to manage HoldCo, to occupy seats on the board, to elect managers to the board, to succeed vacancies on the board, to receive notice of board actions, to participate in HoldCo's board of managers, and to receive information made available to other board manager.

308. The defendants breached Article V by failing to notify Chodes and Group of requests for approval from a majority of the managers or indication of approval from a majority of the managers.

309. The defendants breached Article V and other portions of the HoldCo LLC Agreement by denying Plaintiffs their right to deliberate with and to be heard by board of managers.

310. The defendants breached §§ 5.9 by taking actions in the sale process and the Transaction that required the approval of the managers without informing and allowing the participation of Plaintiffs, including, *inter alia*:

i. selection of the investment bankers; setting terms for the engagement of investment bankers; evaluation of bids, offers, and letters of interest; delivering recommendations to members regarding potential purchasers and negotiations; conducting negotiations with Parthenon; granting permission to HoldCo officers to negotiate for themselves with Parthenon;

ii. a grant of permission to Parthenon and its employees to act as de facto managers or officers of the Oasis Companies and to negotiate with lenders.

iii. acquiescence to and approval of new accounting methods used for the first time in the months leading up to the Transaction the purpose of which was to create the false appearance of lower revenue and to substantiate false bases for a reduced purchase price;

iv. authorization for the issuance, pledge, redemption, purchase, transfer, cancellation and/or conversion of Common Units;

v. actions taken by or through OpCo and/or OpCo's subsidiaries (including but not limited to refinancing loans and negotiating new loan agreements);

vi. actions taken in the capacity of sole member or equity holder of OpCo and/or OpCo's subsidiaries; and

vii. material actions and matters outside the ordinary course of operations of HoldCo, including the purported side deal amongst equity owners.

viii. On information and belief, the items listed above occurred between September 2015 and September 2016.

311. The defendants breached § 5.11(c) by failing to obtain a fairness opinion running to all owners of Common Units prior to merging HoldCo with Merger Sub and prior to combining HoldCo with Intermediate. The defendants further breached § 5.11(c) by purporting to merge HoldCo without first obtaining the requisite fairness opinion as to the interests of all owners of Common Units in HoldCo and/or as to the interests of Group and Chodes.

312. The defendants breached § 5.11(d) by taking actions prohibited thereunder without first putting those matters to the attention of the Common Members, of which Chodes and Group should have been included. This includes, *inter alia*, admission of new members, change in the number of managers, creation or issuance of new securities,

313. Further, the defendants breached § 5.11(d) and other provisions in the HoldCo LLC Agreement by informing some minority members but not others of impending approvals or calls for approvals on matters that occurred during the sale process and as part of the Transaction.

314. On information and belief, all or nearly all of the approvals by Shaw Side Pocket were granted in processes and actions in which minority owners (other than Plaintiffs) were included. The defendants may not rely upon an argument that Shaw Side Pocket was entitled to

grant approvals or take action without notice to or participation by minority members because Shaw Side Pocket actually did notify certain minority members and allow them to participate in the actions taken for the sale process and in the Transaction.

315. The defendants breached § 5.12 by failing to provide the notice required therein. The defendants conducted meetings of members of HoldCo, and by so doing, the defendants were required to give notice to Plaintiffs.

316. The defendants breached § 5.12 by failing to provide the notice required therein. The defendants conducted meetings of members of HoldCo, and by so doing, the defendants were required to give notice to Plaintiffs.

317. The Defendants breached §6.2(c) and § 6.3(b) by paying Shaw SPV interest on its capital contributions. Payment in this regard was made as part of the Transaction. Shaw SPV received approximately $66,230,726.90, of which approximately $22,500,000 was the amount of the purported capital contribution. The defendants made representations during the sale process and during refinancing discussions with current and prospective lenders (which resulted in the loans made as part of the Transaction) which indicated that the $22,500,000 from Shaw SPV was a capital contribution. Thus, around $43,730,726.90 was improperly paid interest upon a capital contribution, which is prohibited by § 6.2(c).

318. The defendants breached §§ 6.3(b) and 7.1, which require the equal treatment of members with regard to capital returns and distributions. The defendants breached § 7.1(b), which required that distributions be made contemporaneously, proportionately and pro rata. As part of a side deal between Shaw SPV and Shaw Side Pocket, Transaction proceeds received by Shaw SPV were distributed to Shaw Side Pocket – without notice to or participation by Plaintiffs. Any

payment to Shaw Side Pocket was an improper return of capital and/or distribution, which was not performed openly or equally.

319. Article VII of the HoldCo LLC Agreement requires comparable treatment of all equity holders. It does not authorize discrimination or favoritism in distributions. Even a merger completed pursuant to § 5.11(c) required that distributions be made in accord with § 7.1. Defendants breached these (and other) provisions that require equal and fair treatment among owners of the same class of equity, such as Common Units in HoldCo.

320. The defendants breached §§ 8.1 by altering accounting methods and applying accounting methods inconsistently. The defendants did so to facilitate Parthenon's purchase for inadequate consideration and to substantiate false characterizations of the Oasis Companies' revenue and value.

321. The defendants breached §§ 8.2, 8.3 and/or 8.6 when they denied Group and Chodes full, complete, unredacted transaction documents and accurate information regarding the economics of the deal.

322. The defendants breached § 8.4 by refusing to answer questions, refusing requests for information, refusing to discuss the affairs of the Oasis Companies, and ignoring inquiries from Chodes and Group since the Spring of 2015.

323. The defendants breached § 8.6 by engaging in concealed and unlawful banking practices – including with regard to the Shaw SPV/Shaw Side Pocket side agreement, the establishment and maintenance of a secret account, and the undisclosed transfers of monies to and from such account.

324. The defendants breached their contractual obligation to act in good faith under § 11.1(a) in the ways and for the reasons detailed throughout this pleading, all of which are incorporated herein by reference – and for such reasons as come to light in discovery.

325. The defendants breached §§ 12.2 by amending or approving amendments to the HoldCo LLC Agreement without notice to or participation of Plaintiffs. Such amendment(s) (which were part of the Transaction) adversely, uniquely, and disproportionately affected Plaintiffs and therefore required their assent. The named Defendants failed to obtain the affirmative approval of Chodes, Group, or Group in its capacity as holding a majority of Units held by the minority owners, the Insider Members, and/or other classes or groups.

326. The defendants breached §§ 12.2 also by waiving rights, which adversely, uniquely, and disproportionately affected Plaintiffs and therefore required their assent. The differential treatment of Group and Chodes from other members including Ralph Shayne, Michael Pekin, Shaw Side Pocket and/or Shaw SPV – or combinations of some of them as to certain matters – without written approval from Group or Chodes was a breach of Section 12.2.

327. The defendants breached § 12.19 by disclosing confidential information to Parthenon and the buying entities to assist in justifying a reduced price bid and sale price. Smolen, Shayne and other officers did so in order to obtain post-Transaction jobs. Ladd, D'Angelo, and Pollock did so in order to be rewarded with side deals, kickbacks, and other compensation – including benefits to Stellus Public from Millennium, Parthenon, and other Parthenon-affiliated or -controlled entities. The defendants communicated confidential information regarding the Oasis Companies' accounting methods, history, auditing history to Parthenon to facilitate Parthenon's supposed "discovery" of a purported problem with the Revenue Recognition Policy and to falsely attribute that to Chodes. The defendants communicated confidential information regarding D.E.

Shaw's strategy, desire to exit its 'side pocket' investments, and investor fatigue. The defendants communicated confidential information regarding other bids and offers to enable Parthenon to submit a bid superior to those of genuine offerors.

328. The HoldCo LLC Agreement does not authorize or permit the provision of information or notice to only certain (a) managers or (b) members but not others. The HoldCo LLC Agreement does not authorize or permit an offer of rights to bargain or to participate in a third-party transaction to be afforded only to certain minority members (Shayne, Pekin, Shaw SPV) but not others (Chodes, Group). Because D.E. Shaw and other named Defendants actually did provide information, notice, and/or opportunities to participate and/or bargain (a) to certain non-Shaw managers on the board and (b) to certain minority owners (which may include Ralph Shayne, Michael Pekin, or Shaw SPV), the Defendants were obliged to deal in good faith with Plaintiffs in an equal and comparable manner.

329. The breached §§ 4.7 and 12.2 when they failed to obtain the affirmative approval of Chodes in his capacity as holding a majority of Special Units before waiving rights or making changes to the rights of Special Unit holders.

330. The defendants failed to act in good faith and engaged in willful misconduct by aiding and abetting Ralph Shayne in violation of his fiduciary duties to Group.

331. All breaches and actions in this count were committed willfully, in bad faith, and constitute misconduct.

332. The named Defendants engaged in, *inter alia*: intentional wrongdoing; willful misconduct; fraud; fraudulent concealment; and fraud by omission. In so doing the defendants not only breached the HoldCo LLC Agreement but also disqualified themselves from relying upon, *inter alia*:

a. the provisions in § 11.1 and all its subsections;

b. the rights, benefits, or protections afforded under §§ 11.2, 11.3, 11.4, 11.5; and

c. the power of attorney provisions in §§ 12.14 and 12.15.

333. The Defendants' bad faith and willful misconduct also disqualify them from relying upon §§ 3.1 and 12.23 of the HoldCo LLC Agreement.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against HoldCo, Shaw Side Pocket, Shaw SPV, Shayne, Smolen, Ladd, D'Angelo and Pollock and enter orders:

a. holding that each named Defendant breached the HoldCo LLC Agreement;

b. holding that each manage and/or controlling owner Defendant breached the express duty under the HoldCo LLC Agreement to act in good faith;

c. holding that each Defendant breached the implied covenant of good faith and fair dealing; and

d. an award of compensatory damages, interest, costs, legal fees, and

e. such further or additional monetary relief as the Court deems just and appropriate.

Count 2 - Breach of the Duty of Loyalty
(against Shayne)

334. Plaintiff incorporates the allegations in Paragraphs 1 through 293 above as if fully set forth herein.

335. As an officer and/or manager of Group, Shayne had a duty of loyalty to Group.

336. Shayne also had and owed to Group all the duties of an agent recognized under Delaware law.

337. Shayne also had a duty of loyalty to the members (*i.e.*, owners) of Group.

338. Shayne lacked independence, acted out of self-interest, was personally interested in the Transaction, and/or did not act in the interests of Group.

339. Shayne usurped corporate opportunities from Group.

340. Shayne breached his duty of loyalty to Group.

341. Subsets or corollaries of the duty of loyalty includes the duty of Shayne to operate in candor and good faith, to communicate with Group honestly, and not to withhold material information from Group.

342. Shayne was in a unique and special position to exercise his power or discretion for the good or to the detriment of Group.

343. Shayne's conflicts of interest and violations of his duties to Group have been direct, palpable, and repeated.

344. Shayne had a personal duty – as a manager, officer, and fiduciary of Group – to be truthful and not to conceal information from Group regarding Group's assets and rights.

345. Shayne has engaged in a pattern of concealment whereby he knew information that was important if not essential to Group in order to protect its interests, yet Shayne failed to disclose such information to Group.

346. Examples of instances and actions where Shayne violated his duty of loyalty to Group include, *inter alia*:

a. concealing information about the sale process;

b. refusing to bargain or to advocate on Group's behalf with any of the other defendants;

c. failing to take any action to preserve, enhance or monetize the value of Group's stake in HoldCo;

d. directing the misrepresentations and false statements (via attorney James Witz) made to the CEO of Group after the sale regarding the terms and conditions of the

sale;

e. hiding and/or depletion of sale proceeds;

f. disclosing Group's confidential attorney-client communications to other defendants;

g. instigating litigation adverse to Group's interests;

h. denying Group and its CEO access to the company's own books and records;

i. committing unauthorized banking transactions;

j. filing of tax returns with the federal government without the input, review or permission of Group or its CEO; and

k. the as-yet unknown harm and/or damages from all of the conduct Shayne has kept hidden from Group.

347. Shayne's actions and breaches were knowing, intentional, malicious, and/or committed in bad faith.

348. The actions and conduct of Shayne constituted, *inter alia*: intentional wrongdoing; willful misconduct; fraud; fraudulent concealment; and fraud by omission.

349. Shayne did not act or operate in good faith.

350. As a direct and proximate consequence of the breaches of the duty of loyalty by Shayne, Group was harmed, sustained damages, suffered economic loss, and were deprived of rights and benefits afforded by law and/or by contract.

351. Such harm, damages and losses include, but are not limited to, those resulting from the extinguishment and loss of Group's equity stake in HoldCo. Shayne's actions enabled, assisted, and facilitated the negotiations, the conduct of others, the corporate governance machinations, the contracts and documents, and other processes (both formal and informal) through which Group's rights were subverted and its property interests were extinguished.

352. Moreover, Shayne's actions to conceal the sale process and the unfolding events obstructed or prevented Group from discovering (a) what was occurring and (b) being in a position with knowledge to take action to (i) protect Group and its constituents and/or (ii) participate in, bargain in, delay, or halt the Transaction.

WHEREFORE, Plaintiff requests that this Court enter judgment in its favor against Shayne and enter an Order:

a. determining that Shayne breached his fiduciary duty of loyalty to Plaintiff;

b. an award of compensatory damages, punitive damages, rescissory damages, restitution, interest, costs, legal fees;

c. an accounting and disgorgement; and

d. such further or additional relief as the Court deems just and appropriate.

Count 3 - Aiding and Abetting Ralph Shayne's Breaches of Fiduciary Duties to Group (against all Defendants)

353. Plaintiffs incorporate the allegations in Paragraphs 1 through 293 above as if fully set forth herein.

354. Prior to or contemporaneous with the improper acts alleged herein, each of the Defendants knew or became aware that Ralph Shayne was an officer and manager of plaintiff Group. For each of the defendant entities, this knowledge or awareness was had by one or several of its officers, directors, managers, employees, counsel, and agents.

355. Each defendant knew that a fiduciary relationship existed between Shayne and Group.

356. Shayne breached his fiduciary duties to Group in a myriad of ways of which each defendant was aware, including *inter alia*:

a. improper conduct with regard to vacancies on and the composition of the HoldCo Board;

b. withholding and concealing information from Group;

c. excluding Group from the Oasis Companies sale process from its outset;

d. never advocating for the fair treatment of Group during the sale process;

e. assisting Shaw Side Pocket and Shaw SPV in orchestrating their side deal and transfer, all of which was concealed from and detrimental to Group;

f. assisting the various D.E. Shaw entities to use the Shaw SPV "debt" as a contrived means of extracting all value and sale proceeds from the transaction, to the detriment of Group;

g. using Shayne's position with Group to create the false appearance that Group was being kept informed and/or consented to aspects of the sale process, the economics of the deal, the transaction, and/or the allocation and distribution of sale proceeds;

h. working with Witz and other Defendants to conceal from Group information about the transaction, the side deals, and the proceeds even long after the transaction;

i. directing James Witz to communicate false and misleading information with material omissions to Group and its CEO in 2016 and 2017;

j. spearheading the effort and litigation against Group's CEO Gary Chodes in order to pressure him to execute a settlement and release of, *inter alia*, Group's claims with regard to the sale of the Oasis Companies;

k. working with the Defendants to structure and implement the Transaction in a manner to circumvent, obviate, deny, and/or violate Group's rights under the HoldCo LLC Agreement;

l. allowing a book entry for purported "debt" to Shaw SPV to compound unabated prior to the sale, for the purpose of enabling D.E. Shaw to use such amount as a basis to collect a greater share of proceeds of a sale of the Oasis Companies; and/or

m. other violations of Shayne's fiduciary duties to Group that occurred during and after the sale process and were known to the Defendants but have been concealed.

357. The breaches described above by Shayne were inherently and obviously wrongful.

358. Each defendant had actual or constructive knowledge that Shayne's conduct was legally improper.

359. Each defendant encouraged and/or assisted Shayne's breaches of duties to Group.

360. Each defendant acted knowingly, intentionally, and/or with reckless indifference.

361. Each defendant was aware of its own role in connection with Shayne's improper conduct and/or breaches.

362. The effect of each defendant's encouragement and/or assistance to Shayne was substantial.

363. Each defendant had actual or constructive knowledge that its or his conduct was legally improper.

364. Shayne's breaches of fiduciary duty to Group actually and proximately harmed and caused damage to Group.

365. Shayne's breaches of fiduciary duty to Group actually and proximately harmed and caused damage to Chodes, who owns a stake in Group.

366. Each aiding and abetting defendant is liable to Plaintiffs for the damages caused by Shayne's breaches of fiduciary duty.

367. All defendants directly benefitted from Shayne's betrayal of Group and Chodes, which allowed the sale process, Transaction, and use of proceeds to unfold as they did and prevented Group or Chodes from discovering the wrongdoing and unfair terms at a time when Plaintiffs could have taken action.

368. Though Raymond James, Jones, the Parthenon Defendants, Shaw LP, Shaw LLC, OpCo, Merger Sub, Intermediate, the Partnership, Stellus, and Stellus Public were not themselves members, officers, or managers of HoldCo, each knew, *inter alia*, that Group and Shayne were in a conflicted and adversarial posture with one another. Each of the Defendants named in this paragraph knew that Group was – or would be once it discovered what was happening – in effect, in competition with the majority owners of HoldCo and Shayne for fair treatment in the transaction and/or portions of sale proceeds.

369. The Respondents in Discovery may be liable under this count if they used wrongful means (by facilitating kickback payments from Parthenon to Stellus and Stellus Public) in exchange for the HoldCo board members' willingness to accede to a low sale price.

370. Ladd, D'Angelo, and Pollock assisted Shayne in nearly all aspects of his breaches because all actions Shayne performed during his tenure as CEO of HoldCo occurred with the board's knowledge, consent, and assistance. Ladd, D'Angelo, and Pollock acted in multiple capacities when they aided and abetted Shayne's breaches of fiduciary duties:

a. managers of HoldCo;

b. *de facto* managers of OpCo,

c. as to Pollock, *de facto* officer of HoldCo and OpCo;

d. owners, officers, and/or managers of Stellus;

e. officers and/or directors of Stellus Public;

f. stockholders of Stellus Public;

g. principals of Raymond James, who they retained as their agent in connection with Stellus, Stellus Public, and the Oasis Companies; and/or

h. business affiliates of the Parthenon defendants through, *inter alia*, Millennium.

371. The aiding and abetting by Stellus and Stellus Public (which has no employees of its own and relies upon those of Stellus, including Ladd, D'Angelo and Pollock) was performed and committed by and through Ladd, D'Angelo, Pollock and/or Stellus CFO W. Todd Huskinson. Stellus and Stellus Public provided the conduit through which Parthenon could channel kickbacks to reward Ladd, D'Angelo, Pollock, and D.E. Shaw for selling the Oasis Companies for less than its true worth. Stellus and Stellus Public ensured Raymond James' complicity by granting Raymond James lucrative engagements on two stock offerings, both of which were publicly announced in 2017 – almost certainly meaning that planning and work on such engagements occurred during the Oasis sale process.

372. Millennium assisted by providing the improper kickbacks to Stellus Public, the rights to which and/or dividends paid were means by which Millennium's controlling owners at Parthenon could channel compensation to Stellus Public, Stellus, Ladd, D'Angelo, and Pollock.

373. Jones and Raymond James assisted Shayne in: concealing the sale process and impending transaction from Plaintiffs; steering and/or rigging the bidding process in favor of Parthenon; declining to re-engage or (in the alternative) making only half-hearted efforts not in good faith to re-engage other bidders or potential purchasers; acquiescing in and helping to propagate the ruse regarding the Revenue Recognition Policy, which these Defendants knew did not affect the value of the Oasis Companies in a manner that warranted any substantial price reduction; acquiescing in and helping to propagate faux negotiations with Parthenon to rationalize

the price reduction; and pushing that the Transaction with Parthenon be completed in lieu of other alternatives that would have created more value.

374. Smolen assisted Shayne in virtually all financial aspects of: the sale process; implementation of the Transaction; accounting malfeasance and fraud; the allocation, distribution, and concealment of sale proceeds; and/or maintaining adherence among the employees and constituents of HoldCo and OpCo to a policy of concealment and omission toward Plaintiffs. In exchange for Smolen's aiding and abetting, Shayne arranged for Smolen to continue to be employed by the Oasis Companies after the sale. And when Smolen was eventually let go, on information and belief Shayne agreed to serve as a recommender to prospective employers where Smolen was seeking a job as a CFO or comparable position.

375. Ladd, D'Angelo, Pollock, Shaw LP, Shaw LLC, Shaw Side Pocket, and Shaw SPV encouraged and/or insisted that Shayne continue his roles as manager and officer of Group. On information and belief, these Defendants agreed to indemnify or reimburse Shayne in the event that Group took action against Shayne. These Defendants encouraged and assisted Shayne with regard to the manner of structuring and implementing the Transaction in a way that concealed information and kept value and sale proceeds away from Plaintiffs. These Defendants agreed to reward and compensate Shayne for completing the sale of the Oasis Companies with amounts and benefits that far exceeded whatever Shayne would have realized from his small membership interest in Group and/or HoldCo. Further, these Defendants knew and allowed Shayne to negotiate with Parthenon for himself personally at the same time Shayne was supposed to be a lead negotiator on behalf of the sellers of the Oasis Companies.

376. Shaw LP, Shaw LLC, Shaw Side Pocket, and Shaw SPV assisted, encouraged, and reaped the fruits of Shayne's decision as CEO of the Oasis Companies not to either pay down, pay

current interest on, refinance with outside lenders, or request that Shaw SPV refinance the purported "debt" (which truly was a capital contribution) to Shaw SPV. This was done specifically in order for Shaw SPV to take all sale proceeds.

377. The Parthenon defendants encouraged Shayne to act contrary to the interests of Group because in so doing Shayne facilitated the sale to Parthenon, which acquired the Oasis Companies for an absurdly low price. Parthenon promised Shayne future employment, future earnings, and other compensation or benefits – all of which Shayne received. Parthenon and Shayne began working together overtly by the Spring of 2016. Today, Shayne, Shayne's family trust, and Parthenon entities co-own the Oasis Companies through their Partnership.

378. Because Defendants excluded and concealed information from Group and Group's CEO Chodes, Plaintiffs reserve the right to identify additional ways in which (a) Shayne breached his duties and/or (b) each Defendant participated in Shayne's breaches.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against each and every Defendant and enter orders:

a. determining that each Defendant aided and abetted one or more breaches of fiduciary duties by Ralph Shayne;

b. an award of compensatory damages, punitive damages, rescissory damages, restitution, interest, costs, legal fees;

c. an accounting and disgorgement; and

d. such further or additional relief as the Court deems just and appropriate.

Count 4 – Breach of Legal and Fiduciary Duties by the HoldCo Board (against Ladd, D'Angelo, Pollock, and Shayne)

379. Plaintiffs incorporate the allegations in Paragraphs 1 through 293 above as if fully set forth herein.

380. Ladd, D'Angelo, and Pollock were elected as managers to board of HoldCo by Shaw Side Pocket and/or Shaw SPV.

381. Ladd, D'Angelo, Pollock, and Shayne had an obligation under Section 11.1(a) of the HoldCo LLC Agreement to exercise their duties and responsibilities as managers in good faith.

382. Shayne was subject to all common law fiduciary duties and none of the limitations in § 11.1.

383. Because the HoldCo LLC Agreement did not eliminate fiduciary duties owed by Ladd, D'Angelo, and Pollock as the Investor Managers, these defendants owed a duty of loyalty and care under Delaware common law – subject to certain defenses or liability limitations in § 11.1 of the HoldCo LLC Agreement (which are inapplicable in this case because these defendants acted in bad faith as well as committed fraud and willful misconduct).

384. The defendants' duties were owed to: HoldCo and its members, including minority members Chodes and Group.

385. The defendants were interested in the Transaction and engaged in self-dealing in violation of the duty of loyalty.

386. The defendants concealed information from Chodes and Group in violation of the duties of loyalty and care.

387. The defendants were required to disclose all material information known and available to the board of managers to Group and Chodes prior to matters being put to the approval of the Common Members of HoldCo. Such matters put to the approval of the Common Members included, *inter alia*: a reduction in the number of managers sitting on the board of HoldCo; the merger and new securities associated therewith; the undertaking of new loans and debt by HoldCo before and during the Transaction; the Transaction and any related disposition and/or sale of the

Oasis Companies' assets; and the purported amendment of the HoldCo LLC Agreement. The defendants made no disclosure and provided no information to Group or Chodes before or contemporaneous with any of these actions. The defendants thereby violated:

a. section 5.11(d) of the HoldCo LLC Agreement; and

b. the duty of disclosure under Delaware common law.

388. The defendants breached the duty of care with respect to: the solicitation and evaluation of bids; supervision of Raymond James; the issues allegedly raised regarding the Revenue Recognition Policy and its supposed (albeit contrived and false) effect on value and price; Parthenon's direct negotiation with the Oasis Companies' lenders; and the Transaction.

389. The defendants received special benefits in which minority members (i.e., Chodes and Group) and in which other managers (i.e., Group) did not share.

390. The defendants lacked independence, acted out of self-interest, and did not act in the best interest of: HoldCo, Chodes or Group.

391. The defendants improperly excluded and concealed information from their fellow managers Chodes and Group (i.e., as successor to vacancies of Employee Managers) regarding meetings, votes, actions, and communications applicable to (a) members, (b) managers, and (c) the Board of HoldCo.

392. The actions and conduct of these defendants were knowing, intentional, malicious, willful, wanton, and/or committed in bad faith and constituted: willful misconduct; fraud; fraudulent concealment; and fraud by omission.

393. The defendants did not act or operate in good faith.

394. As a direct and proximate consequence of the breaches of fiduciary and legal duties by these defendants, Plaintiffs were harmed, sustained damages, suffered economic loss, and were deprived of rights and benefits afforded by law and/or by contract.

395. WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against Ladd, D'Angelo, Pollock, and Shayne and enter orders:

a. determining that each named Defendant breached his fiduciary, legal and/or contractual duties to Plaintiffs;

b. an award of compensatory damages, punitive damages, rescissory damages, restitution, interest, costs, legal fees;

c. an accounting and disgorgement; and

d. such further or additional relief as the Court deems just and appropriate.

Count 5 - Breach of Legal and Fiduciary Duties by Controlling Owners (against Shaw Side Pocket and Shaw SPV)

396. Plaintiffs incorporate the allegations in Paragraphs 1 through 293 above as if fully set forth herein.

397. Shaw Side Pocket was a controlling owner of HoldCo because it owned a majority the equity interest – i.e., 80% of Common Units.

398. Shaw SPV owned a minority equity interest in HoldCo – i.e., 2% of Common Units. But Shaw SPV was fully entitled along with Shaw Side Pocket to elect the Investor Managers to the occupy the majority of the HoldCo board. (HoldCo LLC Agreement §§ 1.1, 5.4.)

399. Shaw Side Pocket and Shaw SPV were connected by, *inter alia*, contracts, common ownership, common control, side agreement(s), and arrangement(s) to work together toward a shared goal.

400. Shaw SPV was an affiliate of Shaw LP. The general counsel of Shaw LP has served as registered agent of Shaw SPV.

401. Shaw Side Pocket and Shaw SPV were under common ownership and control. Shaw LP and Shaw LLC acted as the investment advisor and manager to both (a) Shaw Side Pocket and (b) Shaw Laminar, which owned Shaw SPV.

402. Shaw Side Pocket and Shaw SPV – along with Shaw LP and Shaw LLC – were all part of The D. E. Shaw group, a self-described "global firm with approximately $47 billion in investment capital as of January 1, 2018."

403. Shaw Side Pocket and Shaw SPV formed a control group over the HoldCo board and the Oasis Companies generally. Shaw Side Pocket and Shaw SPV together:

a. exerted their will over the Oasis Companies; and

b. exerted their will over the board of managers of HoldCo.

404. Shaw Side Pocket and Shaw SPV owed legal and/or fiduciary duties to the minority members of HoldCo generally and to Chodes and Group specifically – including a duty to treat them fairly as well as an implied covenant of good faith and fair dealing with respect to any gaps in the HoldCo LLC Agreement.

405. In addition, as controlling owners Shaw Side Pocket and Shaw SPV owed to the minority members of HoldCo generally and to Chodes and Group specifically fiduciary duties of loyalty and care. The HoldCo LLC Agreement did not eliminate the duties described in this count, but merely provided certain defenses available (which should not apply in this case given the controlling owners' willful misconduct and fraud).

406. Shaw Side Pocket and Shaw SPV lacked independence from Shaw LP, Shaw LLC and the D.E. Shaw group.

407. Shaw Side Pocket and Shaw SPV engaged in self-dealing. Shaw Side Pocket and Shaw SPV were on both of sides of, *inter alia*:

a. agreements that proceeds from the sale of the Oasis Companies would be used primarily to pay the unnecessary and contrived "debt" to Shaw SPV;

b. a side deal to allocate sale proceeds to certain favored equity holders;

c. a side deal to approve the sale of the Oasis Companies to Parthenon;

d. agreements or understandings to conceal the side deals from Chodes and Group and to deny Chodes and Group a share of sale proceeds; and

e. agreements for the Oasis Companies to allow capital contributions disguised as debt to accumulate unabated in the years prior to the sale of the Oasis Companies and to be used as a means of collecting all sale proceeds from the Transaction.

408. The defendants breached the duty of care with respect to: the solicitation and evaluation of bids; supervision of Raymond James; the issues allegedly raised regarding the Revenue Recognition Policy and its supposed (albeit contrived and false) effect on value and price; Parthenon's direct negotiation with the Oasis Companies' lenders; and the Transaction.

409. Shaw Side Pocket and SPV received special benefits in which minority members, including Chodes and Group, did not share.

410. Shaw Side Pocket and Shaw SPV did not act in the best interest of HoldCo or the minority members of HoldCo or Chodes and Group.

411. Shaw Side Pocket and Shaw SPV breached their fiduciary and other legal duties to: HoldCo, the minority members of HoldCo, and/or Chodes and Group.

412. Shaw Side Pocket and Shaw SPV improperly excluded and concealed information from Group and Chodes regarding meetings, votes, actions, and communications applicable to (a) members, (b) managers, and (c) the Board of HoldCo.

413. The actions and conduct of Shaw Side Pocket and Shaw SPV, as detailed in other portions of this complaint, constituted, *inter alia*: intentional wrongdoing; willful misconduct; fraud; fraudulent concealment; and fraud by omission.

414. Shaw Side Pocket and Shaw SPV did not act or operate in good faith.

415. The actions and conduct of Shaw Side Pocket and Shaw SPV were knowing, intentional, malicious, willful, wanton, and/or committed in bad faith.

416. As a direct and proximate consequence of the breaches by Shaw Side Pocket and Shaw SPV, Chodes and Group were harmed, sustained damages, suffered economic loss and were deprived of rights and benefits afforded by law and/or by contract.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against Shaw Side Pocket and Shaw SPV, and enter orders:

a. determining that each named Defendant breached its fiduciary, legal and/or contractual duties to Plaintiffs;

b. an award of compensatory damages, punitive damages, rescissory damages, restitution, interest, costs, legal fees;

c. an accounting and disgorgement; and

d. such further or additional relief as the Court deems just and appropriate.

Count 6 - Breach of Legal and Fiduciary Duties
(against Smolen)

417. Plaintiffs incorporate the allegations in Paragraphs 1 through 293 above as if fully set forth herein.

418. Smolen was an officer of HoldCo and/or OpCo.

419. Smolen owed fiduciary and other legal duties of care and loyalty. Moreover, when HoldCo was putting itself up for sale or putting matters to the approval of common members for the Transaction, Smolen had a duty to disclose to Plaintiffs all material information he possessed.

420. These duties were owed to: HoldCo; all members of HoldCo; minority members of HoldCo; and/or Chodes and Group.

421. Smolen learned of and knew that false, distorted, manipulated, and/or misleading information regarding the assets and revenues of the Oasis Companies was being manufactured, communicated, considered, relied upon, and/or used as a justification in connection with: negotiations or re-trading with Parthenon; valuation of the Oasis Companies; the price for the sale of the Oasis Companies; and/or the terms and conditions of agreements being negotiated and drafted to consummate the transaction.

422. Smolen know of the impending merger and agreed to be an officer of Merger Sub,

423. Smolen knew that Shayne was acting improperly and inequitably toward Group and Chodes, in violation of his fiduciary duties as (a) an officer and manager of Group and/or (b) an officer and manager of HoldCo.

424. Smolen had a duty to speak and to reveal to HoldCo's minority owners: Shayne's misconduct; the inaccuracy or falsity of the accounting or financial information; the fact that revenue problems were being falsely attributed to the period of time when Chodes worked at the Oasis Companies; the fact that Smolen's superiors Shayne, Ladd, D'Angelo, and Pollock were aware of and were propagating the inaccurate, false, or misleading information; and/or any other knowledge he had of the apparent breaches of contract, breaches of fiduciary duty, wrongdoing, willful misconduct, malfeasance, and/or fraud.

425. Smolen knew of the outside existing business relationships between Stellus and Parthenon.

426. In coordination with Parthenon, Smolen helped prepare and send multiple communications to lenders confirming that the Revenue Recognition Policy did not diminish the value of the Oasis Companies. Yet Smolen acceded to and assisted in the reductions of bids, offers, and ultimate sale price as a means of currying favor with Shayne and Parthenon.

427. Smolen received special benefits in which minority members, including Chodes and Group, did not share. Smolen received equity and ownership of the Partnership, Intermediate, and/or HoldCo.

428. Smolen lacked independence, acted out of self-interest, and did not act in the best interest of: HoldCo; the members of HoldCo; the minority members of HoldCo; and/or Chodes and Group.

429. Smolen improperly concealed information from Group and Chodes regarding the Oasis Companies, the sale process, the side deals pled in this complaint, and the ruse regarding revenue, accounting, value, and sale price. Smolen falsely attributed revenue problems to Chodes, based in large part on his personal animosity for Chodes.

430. Smolen breached his fiduciary and other legal duties to: HoldCo; the members of HoldCo; the minority members of HoldCo; and/or Chodes and Group.

431. The actions and conduct of Smolen constituted, *inter alia*: intentional wrongdoing; willful misconduct; fraud; fraudulent concealment; and fraud by omission.

432. Smolen did not act or operate in good faith.

433. The actions and conduct of Smolen were knowing, intentional, malicious, willful, wanton, and/or committed in bad faith.

434. As a direct and proximate consequence of the breaches by Smolen, Chodes and Group were harmed, sustained damages, suffered economic loss and were deprived of rights and benefits afforded by law and/or by contract.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against Smolen, and enter orders:

a. determining that Smolen breached his fiduciary, legal and/or contractual duties to Plaintiffs;

b. an award of compensatory damages, punitive damages, rescissory damages, restitution, interest, costs, legal fees;

c. an accounting and disgorgement; and

d. such further or additional relief as the Court deems just and appropriate.

Count 7 – Usurpation of Corporate Opportunities

(against Shaw Side Pocket, Shaw SPV, Ladd, D'Angelo, Pollock, Shayne, and Smolen)

435. Plaintiffs incorporate the allegations in Paragraphs 1 through 293 above as if fully set forth herein.

436. The doctrine of corporate opportunity is derived from and a corollary of fiduciary duties under Delaware law.

437. Shayne was a direct fiduciary of Group and its members.

438. Shayne seized for himself opportunities to participate in the Transaction that loyalty dictates should have been presented to Group. Group was financially able to exploit the opportunities. The opportunities to own or co-own a consumer legal funding business or participate in the Partnership, for example, were within Group's ability and prior line of business. Group had an expectation in the opportunity to participate or bargain with potential offerors for the

Oasis Companies. Shayne put himself in a position inimical to the interests of Group (and/or other members of Group).

439. All officers, managers, and controlling owners of HoldCo who are named as defendants (collectively the "Usurping Defendants") were fiduciaries of HoldCo and its members.

440. The Usurping Defendants seized for themselves the opportunities to participate in the sale process, the negotiations with the chosen bidder, and the Transaction. Loyalty dictates that those should have been presented to minority owners Group and Chodes. Plaintiffs were financially able to exploit the opportunities including, *e.g.*, the $25,000 increment positions in the Partnership given to several HoldCo officers. The opportunities to own or co-own a consumer legal funding business or participate in the Partnership, for example, were within Group's ability and prior line of business. Also, the opportunities to bargain and/or to sell the Plaintiffs' equity in HoldCo were within Plaintiffs' ability and prior line of business. Plaintiffs had an expectation in the opportunities to participate or bargain with potential offerors for the Oasis Companies, as indicated by the notice provisions in the HoldCo LLC Agreement. The Usurping Defendants put themselves in a position inimical to the interests of the minority owners when they concealed opportunities rather than disclosing them.

441. By taking opportunities for their own and hiding them from those to whom the defendants owed fiduciary duties and contractual duties and an obligation to deal in good faith, the defendants were placed in a position inimical to their duties.

442. The defendants interfered with contractual rights of Plaintiffs to learn of, be presented with, and/or participate in the opportunities.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against Shaw Side Pocket, Shaw SPV, Ladd, D'Angelo, Pollock, Shayne, and Smolen, and enter orders:

a. determining that these defendants usurped corporate opportunities and violated their duty of loyalty to and/or an obligation to deal in good faith with Plaintiffs;

b. an award of compensatory damages, punitive damages, rescissory damages, restitution, interest, costs, legal fees;

c. an accounting and disgorgement; and

d. such further or additional relief as the Court deems just and appropriate.

Count 8 - Request for Declaratory Judgment and Equitable Remedies Under the Entire Fairness Standard as Applied to the Transaction and/or Payments to Shaw SPV

(against Shaw Side Pocket, Shaw SPV, Shaw LP, Shaw LLC, Shaw Laminar, HoldCo, OpCo, Merger Sub, Intermediate, Partnership, General Partner, and Parthenon Defendants)

443. Plaintiffs incorporate all allegations outside this Count as if fully set forth herein.

444. The matters raised herein arise from an actual controversy.

445. The Court is empowered to render a declaratory judgment including a determination of the rights of the parties. 735 ILCS 5/2-701.

446. Plaintiffs request that this Court make a determination and declare that the defendants did not act in good faith (rather, the defendants acted in bad faith) with regard to the:

i. exclusion of Plaintiffs from the management and corporate governance of HoldCo between the Summer of 2015 and September 9, 2016;

ii. evaluation of offers for HoldCo;

iii. negotiations with Parthenon for the sale, merger, and acquisition of HoldCo;

iv. Transaction;

v. merger of HoldCo;

vi. the allocation and distribution of proceeds from the Transaction;

vii. the use of funds borrowed under loan agreements dated September 9, 2016 that partially financed the Transaction; and

viii. concealment of all of the above from Plaintiffs.

447. Any purported "lending" by or "debt" to Shaw SPV was unnecessary and contrived. In the ramp-up to the sale process, the named Defendants intentionally allowed a book entry for an amount purportedly owed by the Oasis Companies to Shaw SPV to snowball with unabated compounding interest even though there were many commercially reasonable and viable alternatives given the market conditions in the years immediately prior to the sale (e.g., to repay supposed "principal," to pay current interest, to refinance with other lenders, to refinance with Shaw SPV at a reasonable rate, etc.).

448. The book entry to Shaw SPV was not treated as genuine debt by Defendants or by outside parties. Rather it was treated as a capital contribution and/or as a form of equity.

449. Leading up to the sale, the Defendants intentionally concealed from Plaintiffs their plan to wield this purported Shaw SPV "debt" as a means for D.E. Shaw to claim a greater percentage of proceeds (i.e., 100% of any purported Shaw SPV "debt") than D.E. Shaw would otherwise take (e.g., 80% of distributions to equity for Shaw Side Pocket).

450. Plaintiffs request that this Court make a determination and declare that the actions listed above constitute willful misconduct and/or fraud under the HoldCo LLC Agreement.

451. Plaintiffs request that this Court make a determination and declare that the defendants breached their respective contractual, legal, and/or fiduciary duties (for the reasons set forth in the accompanying counts) with respect to the matters listed above.

452. Plaintiffs request that this Court make a determination and declare that the business judgment rule does not apply to or govern review of these actions listed above.

453. Plaintiffs request that this Court make a determination and declare that the entire fairness standard governs the process culminating in and the price resulting from the Transaction, as well as actions and bargains that were part of the Transaction including the merger, use of sale proceeds, use of loan proceeds, side agreement(s) among HoldCo equity owners and D.E. Shaw, and treatment of amounts contributed by Shaw SPV and payments made thereto.

454. The entire fairness standard examines and looks for: a fair process and a fair price.

455. Plaintiffs request that this Court make a determination and declare that neither the process leading up to nor the price from the Transaction were entirely fair.

456. WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against Parthenon, Shaw Side Pocket, Shaw SPV, Shaw LP, Shaw LLC, HoldCo, and OpCo and enter orders:

a. declaring the rights of the parties
b. rescinding the Transaction and/or any of its components and/or awarding rescissory damages to Plaintiffs;
c. rescinding all payment or use of sale proceeds from the Transaction and/or awarding rescissory damages to Plaintiffs;
d. rescinding all payment or use of loan proceeds from the Transaction and/or awarding rescissory damages to Plaintiffs;
e. rescinding the Transaction Contracts;
f. awarding damages that approximate rescission;
g. awarding punitive or exemplary damages (unless otherwise barred by law);
h. disgorgement of all unfair or ill-gotten gains, benefits, compensation, profits, compensation, bonuses, benefits, profits, equity interests, stock, LLC membership

interests, options, financial incentives or other value received by defendants in connection with the acts listed in this count.

i. costs and disbursements of this action, including fees for attorneys, accountants, court reporters, transcripts, and experts;

j. an accounting; and/or

k. such further or additional equitable or monetary relief as the Court deems just and appropriate.

Count 9 - Aiding and Abetting Breach of Legal and Fiduciary Duties

(against Raymond James, Jones, Shaw LP, Shaw LLC, Stellus, Stellus Public, OpCo, HoldCo, Merger Sub, Intermediate, Partnership, Parthenon Defendants)

457. Plaintiffs incorporate the allegations in Paragraphs 1 through 293 above as if fully set forth herein.

458. Plaintiffs also incorporate the allegations in all separate counts alleging breaches of legal and fiduciary duties by Shayne, Smolen, Ladd, D'Angelo, Pollock, Shaw Side Pocket, and/or Shaw SPV as if fully set forth here.

459. Prior to or contemporaneous with the improper acts alleged herein, each of the defendants named in this count knew or became aware that Shayne, Smolen, Ladd, D'Angelo, Pollock, Shaw Side Pocket, and/or Shaw SPV had a fiduciary relationship with and owed fiduciary and other legal duties to: HoldCo; Group; and Chodes.

460. For each of the defendant entities, this knowledge or awareness was had by one or several of its officers, directors, managers, employees, counsel, and agents.

461. Shayne, Smolen, Ladd, D'Angelo, Pollock, Shaw Side Pocket, and/or Shaw SPV engaged in breaches of their fiduciary and other legal duties.

462. Each named defendant had actual or constructive knowledge that such conduct was legally improper.

463. Each named defendant encouraged and/or assisted the breaches of duties to Group and Chodes.

464. Each named defendant acted knowingly, intentionally, and/or with reckless indifference.

465. Each named defendant was aware of its own role in connection with the improper conduct and/or breaches of duties.

466. The effect of each named defendant's encouragement and/or assistance was substantial.

467. Each named defendant had actual or constructive knowledge that its or his conduct was legally improper.

468. The Respondents in Discovery may be liable under this count if they used wrongful means (by facilitating kickback payments from Parthenon to Stellus and Stellus Public in exchange for the HoldCo board members' willingness to accede to a low sale price. The assistance of Millennium was crucial because it allowed Parthenon to provide undisclosed compensation to the HoldCo managers affiliated with Stellus.

469. The underlying breaches of fiduciary and other legal duties actually and proximately harmed and caused damage to Group and Chodes.

470. Each named Defendant is liable to Plaintiffs for the damages caused by the breaches of fiduciary and legal duties they aided and abetted.

471. Raymond James and Jones:

a. orchestrated the sale process and concealed information from Plaintiffs;

b. knew the falsity of the reasons put forward for reducing Parthenon's bid and for the low price reflected in the Transaction;

c. assisted Stellus in convincing D.E. Shaw to accept the low price; and

d. was rewarded by Stellus with multiple other engagements.

472. Stellus Public was the recipient and beneficiary of the dividends tied to the Oasis Companies deal as a form of back channel payments or and kickbacks paid at the direction of Parthenon. Millennium was the 'middle-man' entity that made the gratuitous grants of equity and subsequent payments to Stellus Public. Millennium did so in cooperation with Parthenon, with which it is affiliated.

473. The Parthenon Defendants and Intermediate actively assisted Shayne, Smolen, HoldCo, and the HoldCo managers beginning in the Spring of 2015 to conceal information from Plaintiffs and to structure the Transaction in a manner designed to deprive Plaintiffs of advance notification or receipt of any consideration.

474. Merger Sub was created and staffed by, *inter alia*, Smolen with purpose and intent of enabling the Transaction to include a merger (i.e., a structure which the defendants then falsely claimed entitled them to withhold notice to Plaintiffs).

475. Group and Chodes were damaged not only by the breaches but also by the aiding and abetting actions of the named defendants.

476. The defendants each were aware of his or its own role in connection with the willful misconduct, fraud, and breaches of fiduciary duty.

477. The defendants knew or should have known that the actions of Shayne, Ladd, D'Angelo, Pollock, Smolen, Shaw Side Pocket and Shaw SPV constituted breaches of fiduciary duty.

478. The defendants knew of the conflicted and adversarial posture inherent in the concealed sale process, Transaction, and resulting distributions.

479. The willful misconduct, fraud, and breaches that these defendants assisted harmed and caused (actually and proximately) damage to Chodes and Group.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against Raymond James, Jones, Shaw LP, Shaw LLC, Stellus, Stellus Public, OpCo, HoldCo, Merger Sub, Intermediate, Partnership, and the Parthenon Defendants and enter orders:

a. determining that each Defendant aided and abetted one or more breaches of fiduciary duties by Ladd, D'Angelo, Pollock, Smolen, Shayne (in his HoldCo capacities) Shaw Side Pocket, and Shaw SPV;

b. an award of compensatory damages, punitive damages, rescissory damages, restitution, interest, costs, legal fees;

c. an accounting and disgorgement; and

d. such further or additional relief as the Court deems just and appropriate.

Count 10 - Fraud
(against HoldCo, OpCo, Intermediate, Shayne, and Parthenon)

480. Plaintiffs incorporate the allegations in Paragraphs 1 through 293 above as if fully set forth herein.

481. On September 13, 2016, James Witz made oral communications and representations to Chodes and Group (described in the complaint) that were false and which also contained material omissions that further rendered the communications and representations false and misleading.

482. On October 10, 2017, Witz made written communications and representations to Chodes and Group (described in the complaint) that were false and which also contained material omissions that further rendered the communications and representations false and misleading.

483. Witz made these communications, representations and material omissions while acting as an agent of HoldCo, OpCo, Intermediate, Shayne, and Parthenon (the "Principals").

484. The Principals collectively planned and crafted the fraudulent communications, misrepresentations, and/or material omissions to be conveyed by Witz.

485. At least one of the Principals (Shayne) had fiduciary duties to Group when the fraudulent communications were planned and conveyed.

486. Each of the Principals (and Witz) knew that the communications were false, contained misrepresentations, and/or contained material omissions rendering the communications misleading.

487. The Defendants named in this count intended the communications made through agent Witz to induce Group and Chodes to act or to refrain from acting, including, *inter alia*, their intention that Group and Chodes (i) would not demand a portion of sale proceeds, (ii) would accept a settlement based on false premises, (iii) would not pursue the matter further because there were purportedly little or no sale proceeds to pursue, etc., and/or (iv) would not pursue the matter further because doing so would expose Chodes to a lawsuit based on the revenue problem described in the October 10, 2017 letter (i.e., which itself was false and fraudulent).

488. The Principals knew or believed that Witz's communications were false or materially misleading.

489. The Principals intended to deceive Chodes and Group.

490. The Principals intended to induce Chodes and Group to act or refrain from acting.

491. Chodes and Group reasonably and justifiably relied on communications delivered by Witz by acting or by declining to take certain action in several ways including, *inter alia*:

a. Chodes and Group believed and conducted themselves reliant upon the notion that no owners received sale proceeds for their equity (i.e., membership interest).

b. Chodes and Group believed and conducted themselves reliant upon the notion that there were no excess sale proceeds left.

c. Plaintiffs had no knowledge of an agreement between Shaw Side Pocket and Shaw SPV.

d. Plaintiffs did not know of a basis they had to demand, and therefore did not demand, a share of sale proceeds or a payment for themselves for their equity interest resulting from the secret side deal. Plaintiffs did not know to demand to partake or receive comparable benefits from the arrangement between Shaw Side Pocket and Shaw SPV.

e. Chodes and Group had no knowledge that a transfer of sale proceeds had occurred or that an account existed that held sale proceeds that were or could be payable to equity owners (i.e., members). So Plaintiffs did not know to seek a portion of those sale proceeds or payment from an account.

f. Plaintiffs did not know to challenge the side agreement between Shaw Side Pocket and Shaw SPV (which obviously was not an arms' length deal).

492. Plaintiffs relied, in part, because Witz appeared to be speaking for entities in which Ralph Shayne had a leadership role. Shayne had fiduciary duties of disclosure and candor owed to Group as a manager, officer, and/or agent of Group.

493. Chodes' and Group's reliance on the Witz communications caused Plaintiffs to be harmed, sustain damages, suffer economic loss, and be deprived of rights and benefits afforded by law and/or by contract.

494. Plaintiffs were deprived of and were never paid their share of sale proceeds resulting from a transfer apparently in favor of equity owners. The sale proceeds to which Group and Chodes were entitled may have been dissipated and/or converted.

495. The Principals (and Witz) tried to trick Chodes and Group into signing a release of claims in exchange for what apparently should have been their rightful share of sale proceeds for equity owners resulting from the Shaw SPV/Shaw Side Pocket side deal. Although Defendants did not succeed in that particular fraudulent aim, it does not absolve Defendants of the other facet of their scheme: they successfully and fraudulently denied Plaintiffs the knowledge of, access to, and right to claim a share of sale proceeds for over a year.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against HoldCo, OpCo, Intermediate, Shayne, and Parthenon and enter orders:

a. determining that each named Defendant committed fraud and/or fraudulent misrepresentation through the communications of an agent James Witz on September 13, 2016, October 10, 2017 and any communications related thereto;
b. an award of compensatory damages, punitive damages, rescissory damages, restitution, interest, costs, legal fees;
c. an accounting and disgorgement; and
d. such further or additional relief as the Court deems just and appropriate.

Count 11 – Fraud by Omission or Concealment
(against Shayne, Ladd, D'Angelo, Pollock, Smolen,
Shaw Side Pocket, Shaw SPV)

496. Plaintiffs incorporate the allegations in Paragraphs 1 through 293 above as if fully set forth herein.

497. The defendants named in this count had a special and/or a fiduciary relationship with Group and Chodes, who were minority owners of HoldCo.

a. Chodes and Group were minority owners of HoldCo, which in turn owned OpCo.

b. Ladd, D'Angelo, and Pollock were managers of HoldCo and members of its Board.

c. Shayne and Smolen were officers of HoldCo and/or OpCo.

d. Shaw Side Pocket and/or Shaw SPV were controlling owners of HoldCo.

498. In addition to their special relationship, certain circumstances required all fiduciaries of Group and Chodes to make full and frank disclosures to them when (a) HoldCo was being put up for sale and (b) HoldCo's members were taking action (such as to change the number of seats on the board, approve the merger, or approve the Transaction)

499. Each defendant named in this count concealed or failed to disclose one or more material facts within its or his knowledge to Plaintiffs.

500. Plaintiffs hereby give notice to Parthenon that Plaintiffs hereby reserve the right to seek leave to add Parthenon to this count if Parthenon became a de facto officer or a de facto manager of HoldCo prior to the (purported) termination of Plaintiffs' membership interests in HoldCo.

501. Concealed material facts are pled with specificity throughout this complaint and are fully incorporated by reference herein. Such concealed material facts were those related to, *inter alia*:

i. the composition of the HoldCo board of managers;

ii. actions or proceedings by that board;

iii. communications among or information provided to HoldCo managers;

iv. the expected price range to be suggested or urged by investment bankers;

v. the solicitation and receipt of bids and offers in Project Kodiak;

vi. the analysis regarding and evaluation of the bids or offers;

vii. the selection of Parthenon's bid;

viii. issues raised or discovered during due diligence;

ix. issues raised or discovered during negotiation with Parthenon;

x. supposed problem(s) with the accounting for revenue;

xi. supposed change(s) to accounting methods;

xii. re-trading or acceptance of a reduced price;

xiii. reduction in the bid or offer of Parthenon during the exclusive negotiating period;

xiv. the agreement in principle with Parthenon;

xv. the anticipated structure of the transaction;

xvi. the terms and conditions of the proposed deal or proposed transaction documents;

xvii. the anticipated economic consequences or impact of the transaction upon owners of Common Units;

xviii. the treatment of minority equity owners' interest under an impending transaction;

xix. the contents of and revisions to the transaction documents;

xx. alternatives considered by the investment bankers;

xxi. alternatives considered by the managers;

xxii. the information learned by officers of HoldCo and OpCo during the sale process;

xxiii. a settlement of claims with the Attorney General of Colorado (which affected Group);

xxiv. efforts by Shayne or other officers to negotiate on their own behalf during the sellers' negotiations with Parthenon;

xxv. dealings with regard to competitive businesses run by D.E. Shaw and/or Pekin;

xxvi. the relationship(s) between the Improperly Constituted Board and Parthenon and resulting conflicts;

xxvii. the relationships between (a) Stellus, Stellus Public, Ladd, D'Angelo, and Pollock and (b) Raymond James and resulting conflicts;

xxviii. the relationships between (a) Stellus, Stellus Public, the D.E. Shaw group, Ladd, D'Angelo, and Pollock and (b) Millennium Trust or MTC Parent Company, L.P. and resulting conflicts;

xxix. side deals between Shaw Side Pocket, Shaw SPV, and/or other equity holders;

xxx. transfers or payments purportedly for the benefit of to be paid to equity holders; and

xxxi. side deals between D.E. Shaw and Parthenon;

502. Each named defendant possessed information regarding the matters listed above and knew that Group and Chodes were ignorant of those matters.

503. Each named defendant knew that Group and Chodes did not have an equal opportunity to discover the truth.

504. Each named defendant actually did conceal and fail to disclose material facts.

505. Each Defendant intended to induce Group and Chodes to take some action(s) and/or to refrain from taking action(s);

506. Plaintiffs relied on the named Defendants' nondisclosure.

507. Plaintiffs would not have acted as they did had they been aware of the undisclosed, concealed, or suppressed material fact(s).

508. Plaintiffs were actually and proximately harmed and damaged as a result of (a) acting without the undisclosed knowledge and/or (b) refraining from action without the undisclosed knowledge.

509. Plaintiffs sustained damages as an actual and proximate result of the omission, concealment, and/or suppression by each named Defendant.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against Shayne, Ladd, D'Angelo, Pollock, Smolen, Shaw Side Pocket, and Shaw SPV and enter orders:

a. determining that each named Defendant committed – itself or through its agent(s) – fraud by omission and/or concealment;

b. an award of compensatory damages, punitive damages, rescissory damages, restitution, interest, costs, legal fees;

c. an accounting and disgorgement; and

d. such further or additional relief as the Court deems just and appropriate.

Count 12 – Tortious Interference with Contract
(against Stellus Public)

510. Plaintiffs incorporate the allegations in Paragraphs 1 through 293 above as if fully set forth herein.

511. Plaintiffs were parties to the HoldCo LLC Agreement.

512. Stellus Public acted at the direction of Stellus, Ladd, D'Angelo, Pollock, W. Todd Huskinson and the board of directors of Stellus Public (which includes Ladd, D'Angelo, Joshua T. Davis, J. Tim Arnoult, Bruce R. Bilger, Paul M. Keglevic, and/or William C. Repko).

513. The defendants:

a. were not parties to the HoldCo LLC Agreement;

b. were aware of the HoldCo LLC Agreement;

c. committed intentional and improper acts that were significant factors in causing breaches of the HoldCo LLC Agreement; and

d. interfered with the HoldCo LLC Agreement.

514. The defendant's actions were not justified and caused (or were significant factors resulting in) breaches of the HoldCo LLC Agreement.

515. The defendant used wrongful means, which brought about breaches of the HoldCo LLC Agreement.

516. The Respondents in Discovery may be liable under this count if they used wrongful means (by facilitating kickback payments from Parthenon Defendants to Stellus and Stellus Public) in exchange for the HoldCo board members' willingness to accede to a low sale price.

517. Under Delaware law, the defendant may not escape liability for tortious conduct regardless of whether certain Defendants had a right to sell the Oasis Companies.

518. Chodes and Group were harmed, sustained damages, suffered economic loss and were deprived of rights and benefits afforded by law and/or by contract as a result of the defendant's actions.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against Stellus Public and enter orders:

a. determining that Defendant committed – itself or through its agent(s) – tortious interference with contract;

b. an award of compensatory damages, punitive damages, rescissory damages, restitution, interest, costs, legal fees;

c. an accounting and disgorgement; and

d. such further or additional relief as the Court deems just and appropriate.

Count 13 - Breach of Implied Covenant of Good Faith and Fair Dealing (against HoldCo, Shaw Side Pocket, Shaw SPV, Ladd, D'Angelo, Pollock)

519. Plaintiffs incorporate the allegations in Paragraphs 1 through 293 above as if fully set forth herein.

520. The named Defendants were parties to and/or responsible for the performance of the HoldCo LLC Agreement.

521. The expectations and understandings of the parties were formed or affected by their historical dealings including as to the operation and corporate governance of OpCo.

522. The HoldCo LLC Agreement and/or the LLC Agreement for OpCo carried implied contractual terms for situations that could not be anticipated. Such implied terms would include, *inter alia,* that the named Defendants may not:

a. manage the Oasis Companies in secret;

b. hire Group's own officer and manager (Shayne) as CEO of the Oasis Companies, yet instruct Shayne that he should not or must not provide or disclose material information to Group or to other minority owners;

c. conspire with and provide confidential information to a third party-purchaser to facilitate its bid, offer, and/or acquisition;

d. accept payments, benefits, and/or promises of either from a third-party trying to acquire the Oasis Companies;

e. discriminate among or treat disparately managers of HoldCo;

f. discriminate among or treat disparately members of HoldCo; and/or

g. sell the Oasis Companies for forms of consideration or payment (i.e., kickbacks, bribes, and payments under the table and through back channels involving different companies) that were not part of or not disclosed fully in the Transaction and/or the Transaction Contracts.

523. The parties would have agreed to proscribe actions like those listed above had they negotiated with respect to those matters.

524. The breaches of the implied covenant actually and proximately caused harm and damages to Plaintiffs.

WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against HoldCo, Shaw Side Pocket, Shaw SPV, Ladd, D'Angelo, Pollock and enter orders:

a. holding that each named Defendant breached the implied covenant of good faith and fair dealing;

b. holding that each named Defendant acted in bad faith;

c. awarding Plaintiffs compensatory damages in amounts to be proved at trial, together with pre- and post-judgment interest;

d. awarding Plaintiffs the costs and disbursements of this action, including fees for attorneys, accountants, court reporters, transcripts, and experts; and

e. such further or additional monetary relief as the Court deems just and appropriate.

Count 14 - Civil Conspiracy
(against all Defendants)

525. Plaintiffs incorporate the allegations in numbered paragraphs above as if fully set forth herein.

526. The defendants combined with one another for an unlawful purpose or for the accomplishment of a lawful purpose by unlawful means.

527. The purposes of defendants' agreement here include, *inter alia*, to: assist agents and fiduciaries to conceal information from their principals Group and Chodes; to exclude Plaintiffs from learning of the Transaction; allow Parthenon to acquire the Oasis Companies below their rightful value; enable Parthenon to compensate decision-makers on the sellers' side; to enable Shaw SPV to collect interest on capital contributions; to allow D.E. Shaw to take all sale proceeds in a manner where no other equity owners receive payment and then secretly have D.E. Shaw dole out portions of the Transaction proceeds to its favored parties and affiliates.

528. The defendants committed unlawful acts in furtherance of the conspiracy, as described in this complaint.

529. The Defendants reached a meeting of the minds and/or knowingly participated in the combination and conspiracy described herein.

530. Actions prior to the sale of the Oasis Companies reveal Defendants' scienter.

531. The defendants knew of and facilitated the sale of defendant David E. Shaw's entire stake in Stellus Public in May of 2015 likely as a means to insulate him from personal liability related to the improper sale of the Oasis Companies.

532. Nearly all of the defendants were represented at some point by the law firm of Kirkland & Ellis.

533. Chodes and Group suffered damages actually and proximately caused by the conspiracy and the acts committed pursuant to that conspiracy.

534. The Respondents in Discovery may be liable under this count if they also agreed to participate in the conspiracy alleged and used wrongful means (by facilitating kickback payments from Parthenon to Stellus and Stellus Public) in exchange for the HoldCo board members' willingness to accede to a low sale price.

535. Plaintiffs request that this Court enter judgment in their favor and against all defendants, jointly and severally, and enter orders holding that defendants engaged in a civil conspiracy and are therefore each liable for the tortious acts of the others.

536. WHEREFORE, Plaintiffs request that this Court enter judgment in their favor against each and every Defendant and award, *inter* alia, the following forms of relief against the Defendants, jointly and several, in amounts to be proved at trial, together with pre- and post-judgment interest:

a. determining that the defendants engaged in a civil conspiracy and committed unlawful acts in furtherance thereof;

b. an award of compensatory damages, punitive damages, rescissory damages, restitution, interest, costs, legal fees;

c. an accounting and disgorgement; and

d. such further or additional relief as the Court deems just and appropriate.

RELIEF SOUGHT

For each count and cause of action above, the Plaintiffs respectfully request that this Court:

a. award Plaintiffs compensatory damages in amounts to be proved at trial, together with pre- and post-judgment interest;

b. order each named Defendant to disgorge of all fees, salaries, profits, compensation, bonuses, benefits, profits, equity interests, stock, LLC membership interests, options, financial incentives or other value he or it received in connection with or resulting from the matters raised in this action;

c. award Plaintiffs restitution and/or rescissory damages in amounts to be proved at trial, together with pre- and post-judgment interest;

d. award Plaintiffs punitive or exemplary damages against each named Defendant (unless otherwise barred by law) in amounts to be proved at trial;

e. award Plaintiffs the costs and disbursements of this action, including fees for attorneys, accountants, court reporters, transcripts, and experts;

f. order each Defendant to provide an accounting consistent with and in a manner to effectuate the Court's orders or award;

g. determine that the attorney-client privilege may not be asserted as to any communication where Shayne was a sender, recipient, or copied party;

h. determine that the attorney-client privilege may not be asserted as to any communication where legal advice was provided to the board of managers of HoldCo;

i. determine that the attorney-client privilege may not be asserted as to any matter on

which a defendant asserts that he, she, or it relief on the advice of counsel;

j. declare that any purported transfer or cancelation HoldCo Common Units is and was void;

k. declare that any purported transfer or cancelation HoldCo Special Units to Chodes is and was void;

l. declare that any purported new HoldCo securities are and were void;

m. rescind the Transaction Contracts and/or award rescissory damages;

n. rescind the Transaction and/or any part thereof;

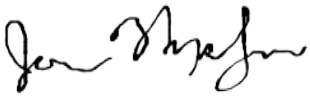
o. rescind the purported merger and/or combination of HoldCo; and

p. such further or additional relief as the Court deems just and appropriate.

Respectfully submitted,

Dated: August 22, 2019

OASIS SHAREHOLDER RECOVERY, LLC and GARY D. CHODES



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CERTIFICATE OF SERVICE

I, James P. Madigan, an attorney, hereby certify that on August 22, 2019, I submitted the attached for electronic filing to the Clerk of the Nineteenth Judicial Circuit, Lake County, Illinois, and emailed a copy of same to the following counsel of record:

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